

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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|---------------------------|---|---------------------|
| IN THE MATTER OF: | : | Docket No. |
| | : | 2012-6 CRB CD 2004- |
| Distribution of the 2004- | : | 2009 (PHASE II) |
| 2009 Cable Royalty Funds | : | |

| | | |
|---------------------------|---|---------------------|
| IN THE MATTER OF: | : | |
| | : | Docket No. |
| Distribution of the 1999- | : | 2012-7 CRB SD 1999- |
| 2009 Satellite Royalty | : | 2009 (PHASE II) |
| Funds | : | |

VOLUME IV

Thursday,
April 16, 2015

Room LM-408
Madison Building
Library of Congress
101 Independence Avenue, S.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 9:12 a.m.

BEFORE:

THE HONORABLE SUZANNE M. BARNETT,
Copyright Royalty Judge

THE HONORABLE JESSE FEDER
Copyright Royalty Judge

THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judge

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P-R-O-C-E-E-D-I-N-G-S

9:12 a.m.

JUDGE BARNETT: Good morning. Please be seated. It was all my fault.

MR. BOYDSTON: Your Honor, before we begin, I am -- this morning at 8:30 in Los Angeles, 11:30 our time, there's a final status conference in a case in which I'm trial counsel. I explained to the judge my circumstances. I have an associate appearing in my stead, but the judge asked me to appear by phone in addition to my associate being present. And so, if possible, I'd ask if we could take our lunch break or a break, if we could break at 11:30 so I can get on the phone for that purpose.

JUDGE BARNETT: All other things being equal, I have no problem with --

MR. BOYDSTON: Thank you, your Honor.

JUDGE BARNETT: Thank you. Are we continuing with Ms. Martin's direct?

MS. PLOVNICK: We're just finishing Ms. Martin's direct.

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1 JUDGE BARNETT: Okay.

2 MS. PLOVNICK: Ms. Martin, if you can
3 please retake the stand.

4 JUDGE BARNETT: And, Ms. Martin, you
5 remain under oath.

6 DIRECT EXAMINATION

7 BY MS. PLOVNICK:

8 Q Now, Ms. Martin, let me direct your
9 attention to the 2004 section of IPG Exhibit 150,
10 which is going to be in one of the binders that's
11 in there. Oh, actually, before I even do that, I
12 had an SOA that Ms. Martin was looking at that
13 Ms. Whittle marked as MPAA Exhibit 377, and I
14 don't believe I moved that into evidence yet but
15 I want to move that into evidence.

16 JUDGE STRICKLER: Yesterday, we had
17 one of those that hadn't been marked at all.

18 MS. PLOVNICK: Yes, Judge Strickler.
19 Ms. Whittle helped me to put a number on that,
20 and it is the DirecTV SOA for 2005-1.

21 JUDGE STRICKLER: I'm sorry. What was
22 the number again?

1 MS. PLOVNICK: It's MPAA 377.

2 MR. BOYDSTON: Your Honor, we object
3 for the same reason we object to the testimony
4 that's coming in in the fashion it did. Other
5 than that -- well, that's our only objection.

6 MR. MACLEAN: No objection.

7 JUDGE BARNETT: 377 is admitted.

8 (Whereupon, MPAA Exhibit No. 377 was
9 received into evidence.)

10 MS. PLOVNICK: Thank you, your Honor.

11 BY MS. PLOVNICK:

12 Q So now, with that cleared up, please
13 turn to the 2004 section of IPG Exhibit 150, Ms.
14 Martin. Now, there was a lot of oral testimony
15 to the 2004 SOAs. Did you review the 2004 -- or
16 the oral testimony from IPG on 2004 -- did you
17 review this 2004 section of IPG Exhibit 150?

18 A I did.

19 Q And did you find any IPG errors as to
20 this royalty year in IPG Exhibit 150?

21 A I did.

22 Q How many?

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1 A Well, the first one that popped up was
2 the Satellite Communications in particular
3 because I believe there are 12 to 13 errors in
4 2004 for Satellite Communications.

5 Q So there are 12 or 13 errors made by
6 IPG or made by Satellite Communications?

7 A By IPG.

8 Q So how did you know that there were
9 errors made by IPG with regard to Satellite
10 Communications?

11 A Well, I was reviewing some of the
12 testimony. I believe her name is Dr. Robinson.
13 And I noticed when she was going over -- I was
14 going over the WGN numbers because of our
15 commercial subscriber issue, and one of the
16 things that popped up is that Satellite
17 Communications does not carry superstations. So
18 immediately the WGN Satellite Communications
19 popped up, and so I saw that they had included
20 other superstations in the Satellite
21 Communications.

22 Q When you say that Satellite

1 Communications doesn't carry superstations, how
2 do you know that?

3 A Well, historically, I know that, I
4 believe in 2004, the Satellite Communications --
5 which is also owned by EchoStar -- acquired the
6 UDTV TV Guide holdings, and so the superstations
7 are accounted for on the EchoStar filing the same
8 -- there was a page in their 2004 exhibit; I
9 believe it's Exhibit 149 --

10 Q So let's turn to IPG Exhibit 149.

11 A Yes.

12 Q And can you direct us -- this is a
13 large exhibit, and I don't --

14 A Yes.

15 Q -- know if there are page numbers.

16 A It's hard. It's about ---

17 Q So maybe is it, I'm thinking it may be
18 about 30 pages in, or 35 pages in?

19 A That's right.

20 Q If you could tell us what accounting
21 period you are --

22 A So the, I believe it's 2004, too,

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1 Satellite Communications. Let's see.

2 Q Was that filed on April 20th, 2005 by
3 Satellite Communications Operating Corp.?

4 A Yes.

5 Q Okay. So there are no page numbers on
6 that.

7 A Yes. It's the first page of the
8 Satellite Communications filing that's landscape,
9 and it doesn't say anything about -- it says
10 "Superstar Copyright" on the top.

11 Q Wait. Let's make sure we all get to
12 the right document. Let me just simply count to
13 the front of the SOA so we can all make sure
14 we're looking at the right thing, if I could just
15 have a moment here.

16 So counsel for SDC has just handed me
17 a pre-marked exhibit that is, in fact, this SOA.
18 So I don't know if it would be simpler for us to
19 use this one or if you want to just -- I mean,
20 I'm happy to go off of IPG's, and that's fine.
21 This is the one that --

22 MR. MACLEAN: It's simply an excerpt

1 from --

2 MS. PLOVNICK: This is an excerpt from
3 this --

4 MR. MACLEAN: Well, so that we didn't
5 have to count the pages.

6 JUDGE BARNETT: Which exhibit number
7 is it that counsel handed you?

8 MS. PLOVNICK: It is SDC Exhibit 645,
9 and it appears to be the exact SOA that I was
10 attempting to have Ms. Martin find in IPG Exhibit
11 149.

12 MR. BOYDSTON: No objection, if it
13 will help us all out here.

14 JUDGE BARNETT: Thank you.

15 MS. PLOVNICK: And I apologize.

16 JUDGE BARNETT: One more time. The
17 exhibit number is SDC --

18 MS. PLOVNICK: SDC Exhibit 645.

19 JUDGE BARNETT: Thank you.

20 MS. PLOVNICK: And I've got three
21 hole-punched and marked copies actually here, so
22 I'll hand them. And if I may give a copy to Ms.

1 Martin?

2 JUDGE BARNETT: You may. This is a
3 new exhibit? It wasn't in my notebook before.

4 MR. MACLEAN: Yes, your Honor. We
5 just brought it today, but it is, in a sense,
6 already in evidence. It's simply an excerpt from
7 IPG Exhibit 149, which is voluminous.

8 JUDGE BARNETT: Okay. And no one
9 objects to 645?

10 MR. BOYDSTON: No.

11 JUDGE BARNETT: 645 is admitted.

12 (Whereupon, the above-referred to
13 document was marked as SDC Exhibit 645
14 for identification and was received
15 into evidence.)

16 BY MS. PLOVNICK:

17 Q So, Ms. Martin, if you could look at
18 SDC Exhibit 645, that might make it a little bit
19 easier on all of us. So what is this document,
20 for the record?

21 A This is the 2004 statement of account
22 for Satellite Communications Operating Corp., and

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1 the page that I referenced in my analysis to
2 review the discrepancies was page five. It would
3 be the first page that's landscaped.

4 Q It is a page that says at the top --
5 if you turn the page this way -- it says,
6 "Superstar Copyright" at the top?

7 A That's correct.

8 Q So, Ms. Martin, what about this page
9 of SDC Exhibit 645, which is an excerpt of IPG
10 Exhibit 149, what about this page showed you that
11 there was a discrepancy or error?

12 A Well, there's a few checkmarks on
13 there. Satellite Communications -- well, two
14 things. One, only the network portion of this
15 document should be included on Satellite
16 Communications. This exact document is also
17 present in the 2004-2 EchoStar filing, and it's
18 in the EchoStar filing that they account for the
19 superstations at the first, the WGN, WPAS, and so
20 forth.

21 So what got my attention was that
22 there was some testimony, IPG testimony

1 referencing the 959,000. If you look at the WGN
2 line, the first line, there was some IPG
3 testimony including that 959,000 in subs. Those
4 subs are included in the EchoStar, so those would
5 be double counted.

6 Q So if you count them for Satellite
7 Communications Corporation and also count them
8 for EchoStar, this is a double-counting of
9 subscribers for 2004?

10 A Correct. Well, I can't say that it's
11 double-counting, but I know that they figured
12 them on their Exhibit 150, and those should be,
13 those should be in EchoStar, not in Satellite
14 Communications. I'm assuming they've included
15 the total WGN numbers for EchoStar. I don't have
16 it in front of me, but, regardless, that's an
17 error.

18 JUDGE FEDER: Excuse me, Ms. Plovnick.
19 Just to make sure the record is clear, when you
20 say 2004-2, you mean the second accounting
21 period, July 1 through 9/31 of 2004?

22 MS. PLOVNICK: That is correct.

1 JUDGE FEDER: Thank you.

2 BY MS. PLOVNICK:

3 Q So, Ms. Martin, there was also
4 testimony and you mentioned just a minute ago
5 about a residential/commercial subscriber error
6 for 2004. So what were you talking about in
7 regards to that?

8 A Well, when I received a copy of the
9 testimony last week, I was surprised to see that
10 in there that WGN -- we had actually -- I know
11 exactly what happened. We had actually gone and
12 migrated our data to a new platform and, in
13 addition, decided to capture every six months of
14 data, not just the totals. And I had a staffer
15 that entered it in the commercial portion of the
16 data entry process. And when I got back in, it
17 was corrected. But, unfortunately, the SDC did a
18 re-cut before that correction was made.

19 Q So was that error in the MPAA CDC data
20 that --

21 A No, it was not.

22 Q It was not. Okay. So, Ms. Martin,

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1 did you prepare a summary of the errors or non-
2 errors that you found in IPG Exhibit 150?

3 A I did.

4 Q So if I may approach the witness, I'm
5 showing you what's been pre-marked as MPAA
6 Exhibit 378. So, Ms. Martin, is this the summary
7 that you prepared?

8 A It is.

9 MS. PLOVNICK: So I would like to move
10 MPAA Exhibit 378 into evidence.

11 MR. BOYDSTON: Your Honor, objection.
12 Once again, this is all brand new to us. It was
13 emailed to me last night. I had sent an email
14 asking if there was anything like this, and this
15 was emailed to me last night. I will represent
16 that. However, we have had, you know, a few
17 hours, given that and a little bit of sleep, to
18 try to figure out what these things mean. So I
19 object again, and I also object on the same
20 grounds as Ms. Martin being brought in.

21 I just want to remind the Court this,
22 the IPG issue here and exhibits were provided

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1 with rebuttal testimony over two weeks ago.
2 Nevertheless, they had the opportunity to bring
3 her up in the direct statement, which would have
4 given us more time and a different ability to
5 react, and they didn't.

6 JUDGE BARNETT: Understood. This is
7 your chance to object to this exhibit, and your
8 objection has been heard.

9 MR. BOYDSTON: Thank you.

10 JUDGE BARNETT: 378 is admitted,
11 subject to the pending objection.

12 (Whereupon, MPAA Exhibit No. 378 was
13 received into evidence.)

14 MS. PLOVNICK: Thank you, your Honor.

15 BY MS. PLOVNICK:

16 Q And, Ms. Martin, can you please just
17 explain what the, how you prepared this document,
18 and especially what I'm looking for is what these
19 column headings mean, or at least the ones that
20 you created.

21 A Sure. When looking at the tally of
22 discrepancies from the IPG Exhibit 150, I wanted

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1 to delve in further as to the source of those
2 discrepancies. And you can see that the first
3 two columns were the original exhibit from, I
4 think, IPG. The first, well, I should say, the
5 date of year through the second percentage --

6 Q The original exhibit, you're talking
7 about IPG Exhibit 150?

8 A That's right. The first page of
9 Exhibit 150, IPG. And then I did a breakdown of
10 the source of some of these discrepancies. And
11 as I had talked about earlier in my testimony,
12 some of them weren't really in there. Some of
13 them were just an explanation of the discrepancy,
14 you know, difference in method of compilation.
15 Then I included the share of Cable Data errors
16 and the share of IPG errors.

17 Q So the columns that say "CDC error"
18 and "IPG error," those are errors that you found
19 attributable to either CDC or IPG?

20 A Yes, and I really focused just on
21 these top 20 or 30 stations in their exhibit
22 because some of the years, there were over 600

1 stations in some of these years, specifically on
2 Satellite Communications. So I kept this
3 analysis, I was just wanting to learn the source
4 in the column.

5 Q Is the number 46 at the bottom of the
6 IPG error column, is that the source of the
7 number you gave Judge Strickler yesterday when he
8 asked is there a total of the number of IPG
9 errors? Is that the source? I think you said
10 there were about 40.

11 A I believe I said it was about 40. I
12 didn't remember the exact number, but yes.

13 Q All right. Thank you, Ms. Martin. I
14 have no further questions.

15 JUDGE BARNETT: Mr. MacLean?

16 CROSS-EXAMINATION

17 BY MR. MACLEAN:

18 Q Good morning, Ms. Martin. I'm Matt
19 MacLean representing the Settling Devotional
20 Claimants.

21 A Good morning.

22 MR. MACLEAN: Your Honor, I'd like to

1 direct the witness to a table in the rebuttal
2 testimony with Dr. Robinson that has not yet been
3 admitted into evidence but I'd like the witness
4 to see and address.

5 MR. BOYDSTON: No objection.

6 MR. MACLEAN: And I don't think the
7 witness has Dr. Robinson's rebuttal testimony in
8 front of her, so if I could give her a copy. And
9 I believe everybody else would have it. I'm
10 handing the witness a copy of --

11 MR. BOYDSTON: Are these exhibits that
12 were in the exhibit book, or are these things in
13 her rebuttal statement?

14 MR. MACLEAN: I'm directing the
15 witness specifically to Table 4 on page 26 of Dr.
16 Robinson's rebuttal statement. And this is not
17 an exhibit in your exhibit binder, so it's only
18 just in this table.

19 MR. BOYDSTON: Thank you.

20 MR. MACLEAN: We have, your Honor,
21 raised objections to various tables in Dr.
22 Robinson's rebuttal testimony. This is not one

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1 to which we've objected.

2 JUDGE BARNETT: Okay, thank you.

3 JUDGE STRICKLER: Repeat the page
4 number, please.

5 MR. MACLEAN: Page 26 of Dr.
6 Robinson's rebuttal testimony to the SDC, and I'm
7 looking at Table 4.

8 BY MR. MACLEAN:

9 Q Ms. Martin, do you see Table 4 there?

10 A I do.

11 Q Is this the table you're referring to
12 when you mentioned something that you saw in Dr.
13 Robinson's testimony regarding WGN on satellite
14 commercial operators?

15 A That's correct. This is the table
16 that caused me to look and review the 2004 data
17 pattern.

18 Q And could you, looking at SDC Exhibit
19 645, is that the exhibit in which or is that the
20 statement of account in which the error in this
21 table is apparent?

22 A Yes.

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1 Q Could you walk through this table and
2 explain exactly where these figures come from and
3 where the errors were made?

4 A Yes. Well, this document that we just
5 referred to is page five of the SDC exhibit, the
6 Satellite Communications filing for 2004-2. When
7 I saw on this table that they had WGN numbers for
8 Satellite Communications, that was kind of a red
9 flag because Satellite Communications has never
10 reported a superstation, much less WGN.

11 Now, I understand the confusion here
12 because this document does, in fact, say it has
13 WGN, WPAX, KTLA, and KWGN. However, the
14 checkmarks below indicate that it's satellite,
15 and I just know from experience that Satellite
16 Communications is responsible for the network
17 distribution and reporting for EchoStar Dish,
18 essentially. So I just knew that, our folks knew
19 that these numbers couldn't be the network
20 numbers for Denver.

21 Q And is this, essentially, a misplaced
22 page?

1 JUDGE STRICKLER: What is "this"
2 you're referring to?

3 MR. MACLEAN: Page five of SDC Exhibit
4 645.

5 THE WITNESS: It's not misplaced. It
6 turns out UVTV in the upper left-hand corner
7 there, EchoStar did actually purchase this
8 company in 2004, but it's just that only the
9 network portion should be reported. I did note,
10 though, that IPG only included these totals, 170
11 for KUSA, KMGH, KTVR, etcetera, and those numbers
12 really are around the 400,000's. But because
13 this is just a portion of it, so they under-
14 reported them still, but it's just the network
15 portion, this page, that belongs on Satellite
16 Communications.

17 MR. MACLEAN: Thank you.

18 MR. BOYDSTON: May I, your Honor?

19 JUDGE BARNETT: You may.

20 MR. BOYDSTON: Thank you, your Honor.

21 BY MR. BOYDSTON:

22 Q Good morning, Ms. Martin. My name is

1 Brian Boydston, and I represent Independent
2 Producers Group. I just really have a couple of
3 questions. With regard to CDC, my understanding
4 is that you employ people to go into the
5 Copyright Office or other places where these
6 records are kept and pour through the originals
7 and take down all the information for CDC's use;
8 is that accurate?

9 A That's correct.

10 Q Now, the individuals who do this,
11 obviously they've got to be very painstaking, I'm
12 sure, in getting the information correct. But do
13 they require, do they require special, like,
14 mathematical expertise to do that? Do they need
15 to be, you know -- I mean, I think my assumption
16 is, as I said, they have to be very painstaking
17 and exact, but do they need some sort of, like,
18 advanced degree in statistics or mathematics to
19 do this sort of work?

20 A No.

21 Q Okay. Would it be fair to say that,
22 to the extent that it requires them to do certain

1 mathematical operations, it's probably nothing
2 more than addition, subtraction, multiplication,
3 and division?

4 A Yes.

5 Q Okay. So it's not something that
6 requires specialized training? Pretty much
7 anyone with a general quality education can do
8 it?

9 A That's true, except for when it comes
10 to stations. There is some training. There's a
11 pretty steep learning curve when it comes to
12 television stations and this industry. So it's
13 true that keying in numbers from one source to
14 another does not require a statistical degree,
15 but you have to be a thinking, analytical person
16 and be trained. But I would agree with you.

17 Q The training you're referring to it
18 sounds like is having a familiarity with
19 television call signals and things like that?

20 A Right, and the platforms and our data
21 user interface and things like that.

22 JUDGE FEDER: Excuse me. What do you

1 mean by platforms?

2 THE WITNESS: Well, platforms meaning
3 our operating system.

4 MR. BOYDSTON: Thank you. I have
5 nothing further at this time.

6 JUDGE BARNETT: Judge Feder,
7 Strickler?

8 JUDGE STRICKLER: Good morning, Ms.
9 Martin.

10 THE WITNESS: Good morning.

11 JUDGE STRICKLER: Question for you
12 with regard to MPAA 378, the page that was given
13 to you this morning, the summary page, IPG versus
14 CDC's satellite summaries.

15 THE WITNESS: Yes.

16 JUDGE STRICKLER: Did you prepare that
17 document?

18 THE WITNESS: I did.

19 JUDGE STRICKLER: And you prepared the
20 language in the far right column summary comment?

21 THE WITNESS: I did.

22 JUDGE STRICKLER: Okay. What I'm

1 trying to figure out so I can understand it and
2 just -- this is just sort of a bit of
3 recapitulation of what you said. In the third
4 column from the right, CDCERR, that's CDC error?

5 THE WITNESS: Correct.

6 JUDGE STRICKLER: That's mea culpa, so
7 to speak, right?

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: And the IPGERR is
10 IPG error, correct?

11 THE WITNESS: Correct.

12 JUDGE STRICKLER: Then we go to
13 summary content. I see in one place where
14 there's a reference in the summary comment of CDC
15 missing filing, but I don't see anything else in
16 that summary comment identifying CDC, if you do
17 the summarization. So for example, you had eight
18 CDC errors in 2004, right?

19 THE WITNESS: That's correct.

20 JUDGE STRICKLER: And you say and 13
21 IPG errors. You have IPG Satellite
22 Communications missing data, plus UVTv, and

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1 before you have typos. Which were the eight CDC
2 errors?

3 THE WITNESS: That would be the typos.
4 That was the commercial entries. All eight of
5 those -- well, actually, that's not true. Six of
6 the eight errors were commercial errors, so those
7 are in the category of typos. The first term in
8 the summary was a generic -- the majority of
9 those were typos.

10 JUDGE STRICKLER: And what do you mean
11 by typo in this context?

12 THE WITNESS: For CDC or IPG?

13 JUDGE STRICKLER: For CDC.

14 THE WITNESS: For CDC, it was when one
15 of my employees included WGN commercial
16 subscribers in 2004 when 2004 did not have
17 commercial subscribers for WGN.

18 JUDGE STRICKLER: And in 2001, you
19 list one CDC error, correct?

20 THE WITNESS: Yes.

21 JUDGE STRICKLER: Am I right that in
22 the summary comment you don't have any summary of

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1 what the error was for CDC?

2 THE WITNESS: That's correct. It was
3 a typo.

4 JUDGE STRICKLER: So that was just an
5 omission on your part of the summary?

6 THE WITNESS: It was just a, if I
7 didn't specify something, it was just a generic
8 typo of --

9 JUDGE STRICKLER: So sometimes if it
10 was a typo, you mentioned it was a typo. And
11 other times, if it says nothing, that means it's
12 a typo?

13 THE WITNESS: Yes, because I was
14 looking at the frequency of errors and trying to
15 account for the majority without getting off
16 that, you know, so it would fit on that page.

17 JUDGE STRICKLER: So when I look at
18 2008 where I see nine CDC errors, there you have
19 CDC missing filing on that one.

20 THE WITNESS: Correct.

21 JUDGE STRICKLER: I want to direct
22 your attention, I don't know if this is relevant

1 to your testimony but I just want to make sure
2 with regard to IPG Exhibit 150. I think you have
3 that book in front of you, don't you?

4 THE WITNESS: I do.

5 JUDGE STRICKLER: There was some
6 testimony, I think it was by Mr. Galaz, if you
7 could turn to page -- there's no page numbers but
8 it's for the 2004 year and it's the last page of
9 2004, if that helps you. 2004 consists of just
10 two pages. So tell me when you're there.

11 THE WITNESS: I'm there.

12 JUDGE STRICKLER: Okay. Do you see in
13 the far right in the comment section in the
14 middle and the note says, "CDC attributed
15 1,489,362 to 'WDLI,' which had call sign 'WJAN'
16 until 1983. However, WDLI was not re-
17 transmitted." Was that an error, in any sense,
18 by CDC?

19 THE WITNESS: It was.

20 JUDGE STRICKLER: Okay. Is that
21 mentioned in the summary, on your summary
22 document?

1 THE WITNESS: For 2004, it's one of
2 the typos.

3 JUDGE STRICKLER: That you would
4 characterize as a typo?

5 THE WITNESS: Yes.

6 JUDGE STRICKLER: And why is that a
7 typo?

8 THE WITNESS: Well, on the actual
9 statement of account, it clearly says WJAN and --

10 JUDGE STRICKLER: I'm sorry. It says
11 what?

12 THE WITNESS: It says WJAN on the
13 actual statement of account, WJAN being a former
14 call sign. You have to remember we have data
15 for all call signs back to 1979. And on the
16 actual statement of account, it says WJAN, but
17 what they really mean -- the WJAN that we
18 represented whose former call sign was JAN, which
19 is now DLI, is in Ohio. And what they really
20 meant on the statement of account was WJAN-LP,
21 which is in West Palm Beach, Florida.

22 So Cable Data entered WJAN -- and,

1 actually, that was part of our migration to our
2 new platform -- it picked up the call reported as
3 JAN and identified it and associated it with the
4 current call of DLI. Clearly, Cable Data error.

5 JUDGE STRICKLER: And at what point
6 did Cable Data catch that error?

7 THE WITNESS: Well, it was, it was
8 caught, but it wasn't caught before SDC data were
9 caught.

10 JUDGE STRICKLER: So what's that way,
11 if you know? If you know.

12 THE WITNESS: Well, this was probably
13 May, I would say within, within weeks.

14 JUDGE STRICKLER: Within weeks of the
15 error or within weeks of today?

16 THE WITNESS: No, no, within weeks of
17 the data being cut for CDC.

18 JUDGE STRICKLER: Thank you.

19 REDIRECT EXAMINATION

20 BY MS. PLOVNICK:

21 Q Just one follow-up question. Ms.
22 Martin, you talk about updates to your system.

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1 How often does CDC update its system or computer
2 system?

3 A Every minute of every day. It is
4 changing virtually every day.

5 Q So any sort of -- so if you noticed
6 something, it would be automatically updated if
7 you needed to make a correction or anything like
8 that?

9 A Yes, once we identify the error --
10 and, actually, you know, Cable Data is in a
11 continuous state of improvement. So what we've
12 done is, actually over the last year since all of
13 these data, the audit tools, so that, on the fly,
14 at the data entry point, errors and anomalies are
15 identified immediately, so we do not have to
16 solely rely on human review.

17 So we've made a lot of improvements
18 since even when these data were cut, so we can
19 make sure that, at that data entry point, if
20 something doesn't add up, it immediately
21 identifies it so we can fix it. Unfortunately,
22 that wasn't in place when my staff entered WJAN.

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1 JUDGE FEDER: When were these data
2 received?

3 THE WITNESS: I believe a year ago,
4 last May of 2014.

5 BY MS. PLOVNICK:

6 Q Is the same issue in MPAA's data, or
7 do you know?

8 A I don't know.

9 Q Thank you, Ms. Martin.

10 MR. BOYDSTON: Nothing further, your
11 Honor.

12 JUDGE BARNETT: Thank you, Ms. Martin.
13 Are we returning now to IPG's case?

14 MR. BOYDSTON: Yes, that would be Dr.
15 Robinson, resuming her from 24 hours ago.
16 However, before that, I would like to call Raul
17 Galaz to the stand briefly, and I will be brief
18 the best I can, just to address some of these
19 issues, since we're on the topic.

20 JUDGE BARNETT: You may, as long as
21 we're waiting for Dr. Robinson. You are still
22 under oath, Mr. Galaz. Thank you.

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1 WHEREUPON,

2 RAUL GALAZ

3 was called as a witness by Counsel for
4 Independent Producers Group and, after having
5 been first duly sworn, assumed the witness stand,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BOYDSTON:

9 Q Mr. Galaz, let me start by directing
10 you to Table 4 of Dr. Robinson's rebuttal to the
11 written direct statement. That was the table
12 which counsel referenced Ms. Martin to, and Ms.
13 Martin testified about issues regarding Satellite
14 Communications Operating Corporation and the
15 inclusion or not inclusion of WGN. Do you recall
16 hearing that testimony a few minutes ago?

17 A Yes.

18 Q And what is your understanding of
19 whether or not WGN was included within Satellite
20 Communications' operations based upon your review
21 of the records and preparation of Exhibit 149?

22 A I think that, for the most part, what

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1 she, well, what she said was accurate. And the
2 only reason that I came to that conclusion was,
3 as we're sitting right here, I was looking at the
4 entry for the royalties that was paid by SCOC and
5 it doesn't make a reference to a superstition
6 royalty as part of its calculation, even though
7 that exhibit was included as part of the SCOC
8 filing, and that's the reason why it came up in
9 IPG's filing. But Dr. Robinson, in fact,
10 recognized this is an issue, and that's why she
11 explicitly excluded out SCOC --

12 MR. MACLEAN: Objection, objection as
13 to his characterization of Dr. Robinson's
14 testimony. Dr. Robinson can speak for herself.
15 She's on the stand right now.

16 JUDGE BARNETT: She may. She can. Go
17 ahead. Next question, Mr. Boydston.

18 BY MR. BOYDSTON:

19 Q Let me ask you to take a look at the
20 chart that Ms. Martin prepared, Exhibit 378.

21 A All right.

22 Q You heard Ms. Martin's testimony a few

1 minutes ago regarding these matters. Well, let's
2 start with regard to her explanation of the CDC
3 errors in 2004. Did that comport with what you
4 had in your report in terms of the errors, one of
5 which she mentioned was the error involving the
6 inclusion of commercial subscribers for WGN?

7 A Yes, that was part of my analysis.

8 Q And were there other errors, as well,
9 that you counted?

10 A Yes, I counted several other errors.
11 After listening to her testimony yesterday, then
12 I went through and, based on at least what was
13 testified to yesterday as the potential source of
14 errors, I went through -- now, when you're
15 referring to typos, that's like a needle in a
16 haystack. There's literally thousands of
17 entries, so I couldn't go through looking at all
18 of that, but Ms. Martin did point out one. The
19 primary one that she pointed out was IPG's
20 failure to include the line item that Cable Data
21 Corporation had entered when there was a digital
22 transmission of the signal.

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1 So for instance, it would be a
2 satellite statement of account that identifies,
3 let's say WABC and then WABC-DT, digital
4 transmission. And in some cases, CDC combined
5 the two. In some cases, they didn't combine the
6 two. But I went through, methodically went
7 through each and every one of the years, '99 to
8 2009, to look -- and this is all last night -- to
9 look at where there were two entries in the CDC
10 data, whether the number that they add up to as
11 far as subscribers is the number that appears in
12 the Exhibit 150 that I prepared and found some
13 very interesting observations.

14 Q And in that process last night, did
15 you update Exhibit 150 or do a new version of
16 Exhibit 150 to reflect that?

17 A Yes.

18 MR. BOYDSTON: Your Honor, I'd like to
19 have this marked next in order for identification
20 purposes, and I will defer to Ms. Whittle for
21 help on that.

22 JUDGE BARNETT: The next number in

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1 order is 285.

2 (Whereupon, the above-referred to
3 document was marked as IPG Exhibit No.
4 285 for identification.)

5 BY MR. BOYDSTON:

6 Q So it should be 285.

7 A Thank you.

8 Q So, Mr. Galaz, this is the update you
9 were just referring to of Exhibit 150?

10 A Yes.

11 Q Let's turn to 2004, which we were just
12 discussing. Again, the pages aren't numbered,
13 but, like the other exhibit, it's got the year
14 numbers on the bottom.

15 A All right.

16 Q And so turning to the first page of
17 2004, actually, I guess, it's turning to the
18 second page of 2004, is that where the updates
19 are that you were just describing right now with
20 regard to the digital programming?

21 A That's correct. What I went through
22 for each year is I added a column that just says

1 "change." And --

2 MR. BOYDSTON: Your Honor, I'd like to
3 move to admit Exhibit 285.

4 MS. PLOVNICK: Your Honor, we object
5 because this wasn't exchanged in advance. We
6 didn't get it last night, this morning, or really
7 any time other than when he walked over to me
8 with it. So we object on that basis.

9 MR. MACLEAN: Your Honor, I haven't
10 had a chance to review it thoroughly, but no
11 objection based, you know, he give us time to
12 read it --

13 MR. BOYDSTON: This was generated
14 early this morning.

15 JUDGE BARNETT: 285 is admitted and
16 marked as an update of 150.

17 (Whereupon, IPG Exhibit No. 285 was
18 received into evidence.)

19 MR. BOYDSTON: Thank you, your Honor.

20 BY MR. BOYDSTON:

21 Q Mr. Galaz, please continue, if you
22 would, with your explanation. I interrupted you

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1 and --

2 A Well, I noted, and for each and every
3 year, I went through and, as I described, I
4 obviously couldn't address typos that hadn't been
5 identified, but I was able to address some of the
6 other issues that Ms. Martin mentioned in her
7 testimony yesterday, the most prominent thing
8 that we had excluded review of certain satellite
9 statements of account or that we had neglected to
10 include a line item when Cable Data Corporation
11 had, in fact, identified a station twice: once
12 for its analog transmission and the other for its
13 digital transmission.

14 With each spreadsheet on the last
15 page, I added a column that says "change" and put
16 an X in it to indicate whether there was any
17 change to the figures. And what I found was
18 that, after certainly looking at the issue of the
19 analog/digital transmission, I did find some
20 changes, but sometimes it actually created a more
21 pronounced variance from what was actually
22 reported in these statements of account.

1 There were cases in which it zeroed
2 out, so that would, for instance, in this 2004
3 page, if you look on "change," you would see
4 where it's marked "change," and you see a zero to
5 the left in bold. That means that there is no
6 difference between our figures and the Cable Data
7 Corporation figures.

8 You also see, like, if you look down
9 further on that one, I think it's for KNBC, that
10 figure for KNBC has now become more pronounced,
11 that, in fact, there still is an error in the
12 Cable Data Corporation figures and it's more
13 pronounced.

14 As an example, what Ms. Martin was
15 just talking about when she was saying, well, IPG
16 inadvertently included, and I can now understand
17 why that is, 959,000 viewers for WGN under the
18 Satellite Communications Operating Corp cell that
19 applies to WGN, if you remove that, it makes the
20 CDC error even bigger.

21 Q And can you direct us to where that,
22 I believe that the number that you just referred

1 to is on the previous page --

2 A Correct. On the first page for 2004,
3 if you look under the column "Satellite
4 Communications Operating Corp-2," the top row of
5 the cell that has the figure 959,749, if you were
6 to remove that, then IPG's number would drop from
7 the current 209,963,822 to a figure, roughly, a
8 million less, and it would make the difference
9 between what was reported by CDC and IPG even
10 greater and make it 209,000,000.

11 So it kind of cuts both ways. But
12 with regard to other issues that she addressed in
13 her testimony, I can also address those, as well.

14 Q And specifically what are you
15 referring to?

16 A Well, for instance, and this is just
17 on the new Exhibit 378, there's a reference for
18 calendar years 1999 through 2002 and it says,
19 "IPG missing filing the first year of Galaxy
20 Latin America and then the next three years
21 DirectTV Latin America. Galaxy Latin America
22 became DirectTV Latin America. Those weren't, in

1 fact, missing filings, and I can maybe why it was
2 an impression that it was because we don't
3 identify them in our spreadsheet. But there was
4 actually a reason for that, and this is one of
5 those that I think you could almost chalk up to a
6 discretionary call being made by someone. The,
7 you might say, modus operandi for Galaxy Latin
8 America and DirecTV Latin America when they file
9 their statements of account was to actually
10 identify the station that was being re-
11 transmitted. They would simply say CBS --

12 MS. PLOVNICK: I object and move to
13 strike a statement on modus operandi or that --

14 JUDGE BARNETT: Sustained.

15 MR. BOYDSTON: I would like to
16 introduce in another exhibit, which would be IPG
17 Exhibit 286 for identification.

18 (Whereupon, the above-referred to
19 document was marked as IPG Exhibit No.
20 286 for identification.)

21 MR. BOYDSTON: This is a U.S.
22 Copyright Office statement of account. And so

1 this would be 286, IPG 286 for identification.

2 BY MR. BOYDSTON:

3 Q Mr. Galaz, what is this document?

4 A This is a satellite statement of
5 account filed by Galaxy Latin America LLC for the
6 second half of calendar year 2000.

7 Q And so we've heard reference to the
8 Galaxy filings by both you and Ms. Martin. Can
9 you put this document into context for us with
10 regard to that issue?

11 A Sure. The criticism of IPG's
12 comparison with the summaries that we created
13 versus Cable Data Corporation, for instance, for
14 calendar year 1999 said that IPG is missing the
15 filing Galaxy Latin America. If you look to the
16 third page of this document where it identifies
17 network stations and PBS feed, you'll see how it
18 was reported by Galaxy Latin America. It just
19 simply says CBS, NBC, ABC, FOX, without
20 identification of natural station. Now, I would
21 --

22 Q Let me just pause here for a second.

1 When you say without identification of an actual
2 station, it does say, for instance, CBS. When
3 you say that's not an identification of an actual
4 station specified --

5 A It doesn't say whether it's a
6 particular CBS affiliate, anything like that.
7 And we have actually seen other circumstances
8 where there's been a reporting of just simply a
9 PBS feed. So it was a discretionary call at that
10 time as to whether to enter as ABC fee or
11 something like that. And we've also seen that in
12 other satellite statement of account filings. I
13 think probably, in light of the issue that was
14 raised here, I probably would have contacted an
15 examiner from the Copyright Office and find out
16 whether they had any further information on this.

17 But in all fairness, I would point out
18 -- and this was, again, a call, but there was a
19 reason for it. If you look at the second page
20 under space "C," it has the same call signs but
21 then it says channel number and location of
22 station. The problem with that is that, even

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1 when you identify a community, you a lot of times
2 have very inexact usage. You'll have a station
3 that will, I think it's WNYW New York that's
4 actually in Secaucus, New Jersey. So when you're
5 playing around with those kind of ambiguities,
6 the decision that was made within our data was
7 simply to not attribute to anybody. We know that
8 a royalty is being paid for it, but it was a
9 conscious decision.

10 So with regard to the errors in IPG's
11 filings for '99 through 2002, it's exclusively,
12 as far as I know, attributable to what she's
13 characterizing as a missing filing, which really
14 isn't a missing file. It was the way that we
15 dealt with the filing.

16 Q So if I understand you correctly, what
17 you're saying is, when IPG looked at this
18 document regarding Galaxy and others like it for
19 other years, IPG's conclusion was we don't know
20 exactly what this is, we're not going to include
21 it. Now, from hearing Ms. Martin's testimony
22 yesterday and today, your understanding is that

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1 CDC did include it and they included it as part
2 of Galaxy; is that accurate?

3 A That's correct. And we had other
4 circumstances in later years with, I think it was
5 DirectTV Latin America, where they identified, for
6 instance, the same way they would say ABC, CBS,
7 NBC, but then they'd say WPIX. So WPIX comes in,
8 and our numbers there are for that but not for
9 anything else.

10 Q Meaning where you say the WPIX
11 reference, you did enter it as WPIX.

12 A Correct, because it's a clear
13 reference.

14 MR. BOYDSTON: Your Honor, I'd like to
15 move to admit Exhibit 286.

16 MR. MACLEAN: No objection.

17 MS. PLOVNICK: No objection.

18 JUDGE BARNETT: 286 is admitted.

19 (Whereupon, IPG Exhibit No. 286 was
20 received into evidence.)

21 MR. BOYDSTON: Thank you, your Honor.

22 BY MR. BOYDSTON:

1 Q Mr. Galaz, let me direct you to what's
2 been admitted as SDC Exhibit 645 and --

3 A I'm not sure if I . . .

4 Q It's a supplement exhibit, the one
5 that was introduced this morning. I'll direct
6 you to the page that's entitled "Superstar
7 Copyright" that Ms. Martin testified about. It
8 says "Superstar Copyright" up on the top, and I
9 think it's the fifth page of the exhibit. And on
10 the left, it says "UVTV."

11 Now, before Ms. Martin's testimony,
12 did you know what UVTV was?

13 A I don't recall.

14 Q And based upon what you, hearing your
15 testimony and what you look into between
16 yesterday and today, you have some understanding
17 now as to how UVTV fits into this picture?

18 A Well, it's sort of, as I was saying,
19 if you look, actually, to the third page of this
20 document where the royalties are calculated and
21 they're separately, because there's a different
22 fee attributable to superstations and network

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1 stations, there's no reference to superstations.
2 So, consequently, that's why I would find what
3 Ms. Martin said to be accurate.

4 But, of course, when you're actually
5 going through these schedules and it says see,
6 you know, this attachment, and you look at
7 something like this and it identifies the network
8 stations for which a royalty has been calculated
9 but then it also includes superstations, the
10 presumption was that the superstations do.
11 However, of course, as I was saying, our entry of
12 this actually, but for our entry of this, it
13 would have reflected and given a larger error on
14 the part of the CDC. If we had removed these,
15 then the discrepancy between the IPG numbers and
16 CDC numbers would have been even more pronounced.

17 Q Turning back to Exhibit 285, and this
18 is, again, your amendment, essentially, of
19 Exhibit 150, let's start with 1999. Looking at
20 the two pages for 1999, did you identify any
21 errors that were brought up by Ms. Martin here?

22 A Actually, it's three pages.

1 Q I'm sorry. It's three pages.

2 A There's three pages. Other than one
3 discrepancy of 1,000 viewers, it's the four
4 stations that all appeared on Galaxy.

5 Q Those --

6 A For which they attributed to a
7 particular station and we did not because a
8 particular station was not actually identified on
9 the satellite statement of account.

10 Q And turning to 2000, 2000 only has two
11 pages. The second page of 2000, it looks like
12 the only error is, once again, that same
13 attribution issue?

14 A There's a 40,000 differential at about
15 119,000,000 for WGN and another 1,000
16 differential. But other than that, it's those
17 four stations on now DirectTV Latin America.

18 Q Okay. Turning to 2001, the second
19 page of 2001, there are several differences, but
20 the pronounced ones are, once again, those
21 attribution ones, those four attribution ones?

22 A That's correct. And just to cut to

1 the chase, we did this with all of them because
2 we have had very little time and certainly not
3 of our files available. We had all the 2004
4 statements of account. We went through those,
5 and that's in, I think, Exhibit 149. And so
6 that's why, you know, with 2004, you know, we
7 went for it and certainly 2005 and checked the
8 numbers with that. And, again, what we found is
9 that, even when we calculated for the issue of
10 analog versus the digital transmission, in some
11 cases it made the difference more pronounced.

12 So you might have called it an error
13 on our part to have accurately entered what CDC's
14 numbers are, but it just further demonstrates in
15 some cases that they're still wrong. In some
16 cases, it becomes smaller. In some cases, it
17 becomes larger. But it's still a discrepancy
18 from what's in the statements of account.

19 Q And so your original testimony with
20 regard to Exhibit 149 essentially was I went
21 through and I looked at this and there are
22 inaccuracies in the CDC data. Ms. Martin has

1 testified about a number of those and made some
2 clarifications, which we've gone over here today.
3 But at this juncture, after hearing her
4 testimony, I mean, I think you just said it, what
5 is your conclusion? It appears there are still
6 inaccuracies with the CDC data; is that your
7 testimony?

8 A That's absolutely correct.

9 MR. BOYDSTON: Thank you, your Honor.
10 I have nothing further.

11 CROSS-EXAMINATION

12 BY MR. MACLEAN:

13 Q Good morning, Mr. Galaz.

14 A Morning.

15 Q I'm looking at the IPG Exhibit 285.

16 A All right.

17 Q Obviously, I have not had a lot of
18 time to look at this document but just, as you
19 were going through your testimony, I noticed --
20 if you turn to the first page of 2003, and the
21 year number is at the bottom. Well, I guess,
22 depending on how you orient the page but at the

1 bottom of the center of each page, correct?

2 A Okay. I'm at 2003.

3 Q Okay. First page of 2003, right-hand
4 column, you have a column for DirecTV-1, right?

5 A That's correct.

6 Q What does the "1" represent --

7 A That's the first half of, that's the
8 first semi-annual period for DirecTV.

9 Q Okay. And so going down the list,
10 these are the numbers of subscribers on each of
11 these stations: WGN 56,000,000; WNYW 8,299,000,
12 etcetera?

13 A Correct.

14 Q Okay. Now, if you look at the second
15 page of 2003, which is actually a continuation of
16 the spreadsheet across, right?

17 A It's the same numbers.

18 Q Same numbers.

19 A Correct, yes.

20 Q And these are your entries, correct?

21 A They're IPG's entries, correct.

22 Q Right. And so, now, there's a

1 difference in WGN. All the way down below WGN
2 for DirecTV-2, which is the second reporting
3 period, right? Is that right? Is that right
4 that DirecTV-2 is the second --

5 A That reflects the second half of --
6 correct. The second semi-annual filing, the one
7 that applies to July to December.

8 Q And I'm sorry, you were nodding, but
9 I --

10 A I understood.

11 Q So is this a data entry error by IPG
12 reporting the first period's numbers under the
13 second period?

14 A This one is, and it's something,
15 actually, that I had caught that was a result of
16 -- when we went back and looked at what had been
17 sent to us by the Copyright Office, it did not
18 include the figures for this. It was an error
19 that was made at the time and not remedied that
20 IPG entered, and I'm sure it was just for a
21 calculation of which stations were going to be
22 selected initially. But IPG entered the exact

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1 same numbers for the first half as they did for
2 the second half, and so if there were different
3 numbers, which I'm sure there's some different
4 numbers, then it may or may not reflect a
5 difference between the IPG numbers and the CDC
6 numbers, but the IPG numbers are inaccurate. I'm
7 just guessing. I don't know how inaccurate they
8 are, but they're likely inaccurate because it was
9 a repeat.

10 Q And you knew they were likely
11 inaccurate?

12 A I knew that they were likely
13 inaccurate?

14 Q You've known that for some time,
15 right?

16 A Well, I've known it since last night.
17 This wasn't recognized, this wasn't recognized
18 until last night when we were going through and
19 going through the numbers.

20 Q I thought you said when you first
21 entered the numbers, you knew that you were
22 missing DirecTV-2, so you just entered the

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1 numbers for DirecTV-1.

2 A That's correct. And that was about
3 ten years ago. I'm doing somewhat of a
4 speculation as to what occurred at that time and
5 trying to recall, and that was a reasonable
6 speculation based on me going back through my
7 electronic records and looking at the statements
8 of account that were sent by the Copyright Office
9 and seeing that it's missing that last page. So
10 that's probably why the results are in asterisks
11 at the top of DirecTV-2. That was the other
12 thing I recognized. It was probably an error
13 that was noted at the time that just wasn't
14 remedied after the fact.

15 Q Now, this was one of the entries that
16 you were just talking about in your direct
17 testimony, right?

18 A No.

19 Q You didn't mention this entry at all
20 in your direct testimony?

21 A No.

22 MR. MACLEAN: Can I approach the

1 witness?

2 JUDGE BARNETT: You may.

3 MR. MACLEAN: I'd like to have this
4 marked as SDC 646, I believe.

5 (Whereupon, the above-referred to
6 document was marked as SDC Exhibit No.
7 646 for identification.)

8 BY MR. MACLEAN:

9 Q Mr. Galaz, I'm handing you SDC 646 for
10 identification. Is this the statement of account
11 for the second period for DirecTV?

12 A It appears to be.

13 Q So this is the one that you were
14 missing before?

15 A This was the one we were missing the
16 last page, the Schedule B.

17 MR. MACLEAN: Your Honor, I move SDC
18 646 into evidence.

19 MR. BOYDSTON: At this point,
20 objections would be disingenuous.

21 MS. PLOVNICK: We have no objection.

22 JUDGE BARNETT: 646 is admitted.

1 (Whereupon, SDC Exhibit No. 646 was
2 received into evidence.)

3 BY MR. MACLEAN:

4 Q Okay. Comparing this -- now you have
5 the Schedule B in front of you, correct?

6 A Okay.

7 Q And comparing that Schedule B to your
8 entries for DirectTV-2 in 2004, are your entries
9 correct?

10 A 2003? You said --

11 Q I apologize. 2003.

12 JUDGE BARNETT: Could you hand us
13 copies, Mr. MacLean?

14 MR. MACLEAN: Oh, I'm sorry.

15 JUDGE BARNETT: Thanks.

16 THE WITNESS: I can see that the
17 figures for superstations WGN and KWGN are
18 accurate. The stations that are identified on
19 the Schedule B as network stations are
20 inaccurate.

21 BY MR. MACLEAN:

22 Q Now, I think you said yesterday that

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1 you triple-checked your numbers?

2 A Correct.

3 Q I think it's fair to say at this point
4 your numbers still contain some errors?

5 A Well, some in here, for the second
6 half of 2003.

7 Q That you did not discover when you
8 triple-checked?

9 A That's correct.

10 MR. MACLEAN: No further questions.

11 BY MS. PLOVNICK:

12 Q Mr. Galaz, did you double- and triple-
13 check the entries that you put in for 2004 for
14 the second accounting period of Satellite
15 Communications Operator Corp for 2004? I'm
16 looking at IPG Exhibit 285, the first page of, I
17 think it's the first page, yes, first page of
18 2004.

19 A Well, I would say that we double- and
20 triple-checked everything. With regard to some
21 errors, you know, if they occurred then they
22 occurred. But we didn't recognize any --

1 Q So with regard to some of these major
2 Los Angeles commercial stations towards the
3 bottom there, like KCNC, if we were to check the
4 Satellite Communications Operator Corp's SOA for
5 the second-half of 2004, would we find that those
6 numbers are inaccurate?

7 A I would presume that you would find
8 that they're accurate.

9 Q You would presume that I would find
10 that they're accurate --

11 A I would presume that you would find
12 that they were --

13 Q But you have not checked to see if
14 they are?

15 A No, I'd indicated that we had double-
16 checked and triple-checked --

17 Q You had double- and triple-checked --

18 A That's correct. And, of course,
19 there's certainly going to be an error, like, for
20 instance, what Jonda Martin pointed out
21 yesterday. There was off by a million on this
22 one, there was off by a million on this one

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1 because of the way it's interpreted. I
2 understand now why it was.

3 Q But there's a big discrepancy here
4 between period one and period two, isn't there?
5 If you look in the column under Satellite
6 Operator Corp 1 and Satellite Operator Corp 2,
7 these numbers are drastically different from one
8 accounting period to the other.

9 A You're talking about for SCOC for 1
10 and 2?

11 Q Yes.

12 A That actually isn't unusual because,
13 oftentimes, there are satellite carriers that
14 come and go. TV Guide, for instance. And that
15 was something else that we looked at. TV Guide
16 had one from -- I think the initial statement
17 account that they had filed that was halfway
18 through a semi-annual period, so the figure
19 between that and the second was dramatically
20 different. And then I think that when they
21 concluded functioning, then the same thing. So
22 the fact that there's a differential wouldn't

1 necessarily alert you to --

2 Q It wouldn't alert you to it, but you
3 haven't actually checked to see if there is a --

4 A If you're asking me whether I've gone
5 back since last night and looked at the SCOC
6 entry, no. There's literally, as I was
7 testifying before, thousands of entries that are
8 entailed in these 11 years of satellite
9 statements of account and we didn't even have the
10 data with us, other than for 2004. But it didn't
11 really seem logical to go in and hunt for needles
12 in a haystack last night.

13 As far as what I was saying before, we
14 had checked these numbers and some of them are
15 attributable to decisions that were made
16 different from CDC, but others are due to, I
17 think, errors in CDC.

18 Q And in some cases, your check was ten
19 years ago, per your testimony, rather than
20 recently? You were talking about DirectTV in
21 2003, and you said, oh, I put the number in ten
22 years ago and I hadn't checked it; is that your

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1 testimony?

2 A Well, 2003 is when it was initially
3 entered, correct. The 2003 data was probably
4 entered ten years ago. That's correct.

5 Q And you hadn't rechecked that number
6 at any point?

7 A No, we had. I think we just hadn't
8 realized what that error was.

9 MS. PLOVNICK: No further questions,
10 your Honor.

11 JUDGE BARNETT: Thank you.

12 MR. BOYDSTON: Nothing further, your
13 Honor.

14 MR. MACLEAN: Nothing further.

15 JUDGE BARNETT: Thank you. You may
16 recall Dr. Robinson.

17 MR. BOYDSTON: Thank you, your Honor.
18 Your Honor, I think she went up to the cafeteria.
19 There was something left in the waiting room, and
20 we're going to go check to see if she's in the
21 cafeteria. I apologize. Would you like to take
22 a break now?

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1 JUDGE BARNETT: Let's take a 15-minute
2 recess.

3 MR. BOYDSTON: Thank you, your Honor.

4 (Whereupon, the above-entitled matter
5 went off the record at 10:21 a.m. and resumed at
6 10:39 a.m.)

7 JUDGE BARNETT: Please be seated.

8 Whereupon,

9 LAURA ROBINSON

10 Was recalled as a witness by Counsel for
11 Worldwide Subsidy Group, d/b/a Independent
12 Producers Group and having been previously duly
13 sworn, resumed the witness stand, was examined
14 and testified as follows:

15 MR. BOYDSTON: Thank you, Your Honor.
16 Before I begin the examination, Your Honor, you
17 recall yesterday how we introduced exhibits to
18 replace exhibits 164 to 194, IPG 164 to 194. We
19 discarded or withdrew 164 to 194 to be replaced
20 with 253 to 283. After sessions yesterday
21 afternoon it was determined that those had an
22 error in them, and so late night Navigant redid

1 those. And so now we have replacements for those
2 using the same numbers. So we don't have to have
3 the childish scrawl handwritten number anymore.

4 So if we can take the prior 253 to 283
5 from yesterday with the handwritten numbers on
6 them and damage them to heck, I will then
7 distribute the new ones that only don't have the
8 childish scrawl, but also have substantive
9 changes to them which needed to be made to make
10 the numbers accurate. And I've distributed them
11 already to counsel.

12 JUDGE BARNETT: Thank you.

13 MR. MacLEAN: Your Honor, this is
14 really getting overwhelming for those of us out
15 here on this side of the bar.

16 JUDGE BARNETT: I think it's different
17 on this side.

18 (Laughter)

19 MR. MacLEAN: I would implore the
20 Judges to say enough is enough and to reject this
21 replacement replacement effort by IPG.
22 Therefore, we oppose the IPG's proposal.

1 MR. OLANIRAN: I support that request,
2 Your Honor. You will recall yesterday one of the
3 reasons that I said we had received emails from
4 Mr. Boydston at 6:42 a.m. in the morning and
5 another one at 7:03 a.m. in the morning. At
6 11:44 p.m. last night we received another FTP
7 protocol email asking us to download the document
8 reports.

9 And one of the reasons that I
10 requested that the Judges give us a ruling on the
11 conflicting titles prior to meeting the revised
12 exhibits that Mr. Boydston offered yesterday was
13 because we thought that if we prevailed on the
14 conflicting titles issue, then it would require
15 another revision to the exhibit, and which would
16 of course require us to study another 6 to 8
17 pages and then try to figure out what to do with
18 them. But the Judges went ahead and admitted
19 them.

20 And if you recall not once did Mr.
21 Boydston say anything about the conflicting title
22 issues. He never thought the fact that they

1 should not have been calculated in any of the
2 exhibits about that in the first place because
3 the March 13th order was very clear. And the
4 same with the Envoy issue. So of course what
5 happens last night, they've now sent us a new
6 batch of files which we actually did not receive
7 until this morning that updates that reflected
8 exactly our position on the conflicting title
9 issue and reflected additional issues on the
10 Envoy issue.

11 And then about five minutes or so ago
12 we get another set of exhibits now reflecting the
13 totality of the conflicting title issue and the
14 Envoy issue.

15 MR. BOYDSTON: These are the same
16 ones --

17 JUDGE BARNETT: Just --

18 MR. BOYDSTON: Oh, I'm sorry.

19 MR. OLANIRAN So as Mr. MacLean has
20 expressed, we are really tired of this. This is
21 gaming the system at its best. The Envoy issue
22 and the March 13th issue, they knew from when

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1 that order came out that all of this was clear to
2 everybody. And even if Mr. Boydston had thought
3 there was some issue yesterday or they were going
4 to concede, he didn't even say a word about that
5 issue. They just went back, redid the exhibits
6 and then sent it out. And what we're supposed to
7 do exhibits we received first thing this morning
8 and the ones we received about five minutes or so
9 ago, we're supposed to somehow figure out whether
10 or not we didn't underlying data. They emailed
11 these documents to us. So we're supposed to
12 somehow figure out exactly whether or not these
13 numbers are correct.

14 So we urge that both the -- the
15 exhibits that were -- the replacement exhibits
16 from yesterday should now be rejected and the
17 entirety of the new exhibits that they're now
18 giving to us should be rejected on the basis of
19 the timeliness of the exhibits ---

20 MR. BOYDSTON: Just a point of fact --

21 JUDGE BARNETT: Mr. Olaniran, in light
22 of the fact that yesterday Mr. Boydston said they

1 agreed that they would resolve all of the
2 allocation MPAA versus IPG in MPAA's favor, you
3 still want to revert to the first set of
4 documents which might not give MPAA the same
5 amount?

6 MR. OLANIRAN: Which, the first set of
7 documents in the written rebuttal?

8 JUDGE BARNETT: That would be Exhibits
9 164 through -- whatever they were that were
10 updated yesterday.

11 MR. OLANIRAN: Well, I make the
12 request with the understanding that our motion
13 still stands. Because we had requested for those
14 exhibits to be stricken.

15 JUDGE BARNETT: I see. Okay. And
16 your motion does still stand.

17 Mr. Boydston, would you like to
18 respond?

19 MR. BOYDSTON: First is just a factual
20 matter. What we sent last night was the same as
21 what we distributed this morning. Those are not
22 different. And last night when we did send it,

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1 the upload was all the underlying data. So we
2 brought all the underlying electronic data last
3 night at quarter to 12:00 along with a PDF copy
4 or an electronic copy, what we distributed here
5 this morning. So there's only one set since
6 yesterday to today, for what that's worth.

7 Now, what we presented yesterday had
8 fixed we thought all the problems until after
9 sessions and we had a chance to go through it
10 more carefully and we realized that was
11 incorrect, at which point we directed our experts
12 Navigant to correct that problem. And it's a
13 problem of some consequence. It lowers the IPG
14 numbers appropriately and the IPG methodology.
15 And so we've done that.

16 And these exhibits we have here now
17 are accurate. Those that we presented yesterday
18 unfortunately still contained an inaccuracy. And
19 I apologize for that. They can certainly cross-
20 examine Dr. Robinson about that if they want to
21 as to why that occurred, but the fact of the
22 matter was it is an error. It should not be

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1 propagated. We are not making claim for errors.
2 We're trying to make claim for what's accurate.

3 JUDGE STRICKLER: So the original
4 documents that you submitted with your written
5 rebuttal statement gave IPG a certain percentage.
6 Then when you made your first correction, you
7 reduced the percentage that went to IPG and
8 increased the percentage that went to MPAA. The
9 SDC is not in fiber, does it?

10 MR. BOYDSTON: I think that's correct,
11 Your Honor. Well, actually, no, I think there
12 was a small change to the SDC, and right now I'm
13 -- because we removed the Envoy programming --

14 JUDGE STRICKLER: So it increased
15 SDC's --

16 MR. BOYDSTON: Yes. Yes.

17 JUDGE STRICKLER: -- increased IPG's
18 number. The further revision that came in late
19 last night and this morning reduces IPG's number
20 even more. And you're proffering, I suppose,
21 implicitly that through this witness you'll be
22 able to explain what those changes were and will

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1 those changes harm IPG's position, help MPAA's
2 position and help the SDC's position?

3 MR. BOYDSTON: Yes, although I think
4 there were -- the net is that. I think that
5 within the programs category there were certain
6 changes that may have helped IPG, but by far the
7 net diminished IPG's shares quite a bit.

8 JUDGE STRICKLER: And if we allowed it
9 in, the witness would go through each of the
10 individual ones that ultimately netted to the
11 detriment of IPG?

12 MR. BOYDSTON: Certainly.

13 MR. OLANIRAN: Actually, Your Honor,
14 I just did a brief run through. The vast
15 majority of the new shares that were received
16 about 10 minutes ago actually are in IPG's favor.

17 MR. BOYDSTON: Well, all we're going
18 to need to do is look at the bottom line numbers.
19 I can tell. I looked at them yesterday and they
20 are.

21 JUDGE BARNETT: Mr. Boydston, can you
22 quantify how many changes Navigant made? Was it

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1 one change in a formula that resulted in multiple
2 changes in the output data, or was it something
3 else? I mean, was it 12 changes in the input
4 data?

5 MR. BOYDSTON: I can give you my
6 version. And you're -- but let me just -- you're
7 talking about the --

8 JUDGE BARNETT: But what did you ask
9 the expert to change?

10 MR. BOYDSTON: You're talking between
11 yesterday and today, correct?

12 JUDGE BARNETT: Between yesterday and
13 today.

14 MR. BOYDSTON: Generally it was this:
15 All the program titles for which IPG and MPAA
16 made claim pursuant to the order were supposed to
17 go to MPAA. What Navigant did is they put all
18 those titles to the credit of MPAA. But then it
19 was determined that they actually had not removed
20 all of them from IPG. They're all in for MPAA,
21 but somewhere in -- or some portion were in for
22 IPG, which was incorrect, of course. And I said,

1 well, that's incorrect. You need to take them
2 out of IPG and have them all just in MPAA, which
3 is what they did, which is why the general
4 numbers -- contrary to what Mr. Olaniran said,
5 the numbers are noticeably smaller.

6 JUDGE STRICKLER: Did the change when
7 you removed these programs for IPG cause some of
8 the IPG valuations to actually go up?

9 MR. BOYDSTON: No.

10 JUDGE STRICKLER: And that happens in
11 your formula at times.

12 MR. BOYDSTON: No. No, it did not.
13 Judge Barnett, remember you asked about did any
14 of the changes inure to the benefit of IPG? The
15 changes that inured to the benefit of IPG were
16 ones that were made to the version that was
17 coming in yesterday, even though the overall net
18 of the changes was a detriment even then to IPG.
19 But between yesterday and today it's only been a
20 detriment to IPG.

21 MR. OLANIRAN: Just one clarification.
22 The revised exhibits from yesterday did not

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1 change anything with respect to the exhibits we
2 just received about 10 minutes ago. Those dealt
3 principally with the methodology that -- with Dr.
4 Robinson's methodology. The ones we received a
5 few minutes ago are the ones that are reflecting
6 the conflicting titles issue. And just because
7 of the titles issues, and just because in the
8 net, even if the net favors MPAA, the fact is
9 each year's funds is distinct, you don't have the
10 same payments. And so the fact that it's a net
11 gain, if in fact it is, for MPAA makes no
12 difference at all because each funds are
13 distinct.

14 JUDGE STRICKLER: That begs a good
15 question. You said the net is negative to IPG.
16 Is it negative to IPG in both the devotional and
17 the programs supplied categories in every year?

18 MR. BOYDSTON: It is to -- well,
19 there's really been I think almost no change
20 between yesterday and today for SDC devotional.
21 But that's not where the main change was made.
22 It was in regard to the IPG/MPG rights to

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1 programs. So I don't think there was maybe any
2 change to the SDC, or if there was, it was
3 minuscule. But with regard to the program parts
4 category, yes, for each year the percentage --
5 IPG's percentage went down significantly because
6 of that change. I mean, I know for each year it
7 went down, yes.

8 JUDGE STRICKLER: So Mr. Olaniran's
9 hypothetical concern you're saying it's not a
10 problem because it really -- the fund went down
11 -- the security portion of the fund that goes to
12 IPG went down in every year. So that's just a
13 factual issue that we resolve now through the
14 witness, I suppose.

15 MR. BOYDSTON: Right, and it was an
16 across-the-board decrease because all those
17 programs are taken out for each years. So it
18 reduced IPG's share appropriately for each year.

19 MR. OLANIRAN: I have the numbers and
20 I have the new numbers, and --

21 MR. MacLEAN: Your Honor, I think --

22 JUDGE STRICKLER: No, he's talking.

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1 Don't interrupt.

2 (Laughter)

3 MR. OLANIRAN: I have the numbers that
4 MPAA proposed to IPG and the numbers that IPG is
5 proposing under MPAA's methodology. And we'd
6 move to strike. Their numbers do pull off from
7 the old original rebuttal testimony.

8 MR. BOYDSTON: Now I understand what
9 Mr. Olaniran is saying. I did not understand
10 before. May I clarify?

11 JUDGE BARNETT: Well, let me hear from
12 Mr. MacLean.

13 MR. MacLEAN: Your Honor, I understand
14 what Mr. Olaniran's saying. I did not understand
15 before, and may I clarify?

16 MR. BOYDSTON: I think now we both
17 understand.

18 (Laughter)

19 JUDGE BARNETT: All right.

20 MR. MacLEAN: And I think this is part
21 of the problem that we're facing here. We do
22 need to be very distinct as to what exhibits

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1 we're talking about here. When Mr. Boydston
2 first brought up this issue, he was referring to
3 what IPG has now proposed to mark as Exhibits 253
4 through -- oh, I'm sorry. These are replacements
5 for Exhibits 253 through 283?

6 MR. BOYDSTON: Yes.

7 JUDGE STRICKLER: Let's call those 253
8 Prime and 283 Prime.

9 (Laughter)

10 MR. MacLEAN: So when Mr. Boydston
11 first brought this issue up, he was referring to
12 253 Prime through 283 Prime, which are themselves
13 -- because 253 through 283, which were
14 replacements for Exhibits --

15 MR. BOYDSTON: One-sixty-four

16 MR. MacLEAN: -- 164 through 194.
17 That is what I understood us to be talking about
18 here.

19 Mr. Boydston also during the morning
20 break handed us hard copies of replacements for
21 Exhibits 195, 196, 224 and 225. These were not
22 replacements that were given to us yesterday.

1 These are replacements that are being brought for
2 the first time today. He didn't bring that up,
3 so I didn't -- I haven't addressed these yet. We
4 have an even, I will say, stronger objection as
5 to the admission of these exhibits. I haven't
6 addressed them yet. I believe these are the
7 exhibits that Mr. Olaniran says that at least in
8 the program suppliers category inure to IPG's
9 favor.

10 MR. BOYDSTON: And that is correct.
11 I hadn't gotten to those yet because I want to
12 deal with these first.

13 MR. MacLEAN: Your Honor, I also
14 wanted to add, in Mr. Boydston's argument; and I
15 regret that I'm always the one raising this
16 issue, I believe he has admitted that over the
17 break with Dr. Robinson on the stand he's engaged
18 in communications with Dr. Robinson about her
19 testimony.

20 MR. BOYDSTON: Your Honor, you may ask
21 her yourself. It was about her testimony. It
22 was about whether or not there were errors in

1 these documents and the instruction to correct
2 those errors. That was the nature of my
3 conversation with her. This has nothing
4 whatsoever about her testimony. But naturally
5 when she told me that there was an issue, I asked
6 what it was so that we could correct it.

7 MR. MacLEAN: It would have been
8 preferable in that circumstance, Your Honor, for
9 Mr. Boydston to advise the parties and the Judges
10 so that we could have proceeded in light of the
11 facts.

12 MR. BOYDSTON: This was after we were
13 done with this session yesterday and I wanted to
14 get this done as soon as possible to get it to
15 counsel for obvious reasons.

16 MR. OLANIRAN: And, Your Honor, to be
17 quite frank, it was late yesterday evening when
18 Mr. Boydston sent us an email requesting
19 information from Ms. Martin. We actually
20 informed him that we could not engage with Ms.
21 Martin because she was still on the stand and the
22 only document we had was provided to her. So Mr.

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1 Boydston had to know he could not communicate
2 with Dr. Robinson.

3 MR. BOYDSTON: I believe I'm entitled
4 to speak with her. I'm not entitled to speak
5 with her about her testimony. And I think it
6 would be absurd if the order on me was to
7 propagate tales that I know are wrong and not try
8 to correct them.

9 JUDGE BARNETT: We will return.

10 (Whereupon, the above-entitled matter
11 went off the record at 10:56 a.m. and resumed at
12 11:05 a.m.)

13 JUDGE BARNETT: With respect to
14 Replacement Exhibits 253 through 283, we will
15 accept those on the same terms we accepted 253
16 Prime through 283 Prime.

17 (Whereupon, the above-referred to
18 documents were received into evidence
19 as IPG Exhibit Nos. 253 Prime through
20 283 Prime.)

21 JUDGE BARNETT: And that is, counsel
22 for the SDC and counsel for MPAA will have

1 sufficient time, whatever you deem that to be, to
2 respond to these in writing. IPG will have an
3 opportunity for a reply, a strict reply. And if
4 we deem it is necessary upon receipt of those
5 written papers to have further testimony, we'll
6 call in witnesses or we will instruct you to
7 bring in your witnesses and we'll have further
8 testimony.

9 This is grossly unfair. It is
10 inappropriate to have corrections to exhibits
11 seriatim during the course of a hearing. We have
12 in the past allowed exhibits that had updated
13 numbers, for instance, but not error corrections.
14 In this case this is a hybrid of updating and
15 correction. And because the corrections are at
16 least purported to be to bring these exhibits
17 into conformance with our order from March 13th,
18 even though we did not think there was any
19 ambiguity in that order, we will allow them under
20 these conditions.

21 At the end of this hearing, counsel,
22 we'll talk about deadlines where you can confer

1 and come up with those set of deadlines for
2 responding to these late exhibits and replying,
3 as well as responding to the pending motions;
4 there are many, and replying to those. We would
5 prefer to have you agree to a time table and just
6 submit it to us, but if you can't, let us know.
7 We'll set timetables for you.

8 We are not at this point ruling on the
9 additional new exhibits that I just learned about
10 when Mr. MacLean was on his feet a few minutes
11 ago. This is only as to 253 through 283. Okay?

12 MR. BOYDSTON: Thank you, Your Honor.
13 Just a point of nomenclature in case we have to
14 discuss this further. Judge Strickler came up
15 with the tag 253-283 Prime. And just so we're
16 all on the same page, is that referring to the
17 first group or the group we have today?

18 JUDGE STRICKLER: I intended the prime
19 to refer to the most recent change.

20 JUDGE BARNETT: Oh, I had it
21 backwards. I was referring to prime as the ones
22 we got yesterday.

1 MR. BOYDSTON: So in the future if we
2 have to discuss this, prime will be the most
3 recent ones, correct?

4 JUDGE BARNETT: I don't know why we
5 would ever have to discuss it if these are
6 supplanting 253 to 283.

7 MR. BOYDSTON: Your Honor, I agree.
8 I'm just trying to be clear. May I distribute
9 them?

10 JUDGE BARNETT: Please distribute
11 them. And I don't want to hear any questioning
12 about the differences between yesterday's set and
13 today's set. Okay? The only questioning that is
14 allowed is as to the differences between 164 and
15 253. We will pretend yesterday's set never
16 happened. Thank you.

17 JUDGE STRICKLER: So the ones you're
18 distributing now are the ones that we are calling
19 prime?

20 MR. BOYDSTON: Yes, these are the
21 prime.

22 MR. MacLEAN: Your Honor, for the

1 record may I request a ruling on our additional
2 objection relating to communications between the
3 witness and counsel while she was on the stand?

4 JUDGE BARNETT: Well, you made an
5 observation. Did you have a motion?

6 MR. MacLEAN: Yes, Your Honor. We
7 renew our motion to disqualify Dr. Robinson on
8 that basis.

9 JUDGE BARNETT: Overruled, or denied.

10 MR. BOYDSTON: Your Honor, I'd like to
11 move to admit Exhibits 253 to 283 Prime.

12 JUDGE BARNETT: Admitted on the
13 conditions I just stated.

14 MR. BOYDSTON: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. BOYDSTON:

17 Q Dr. Robinson, yesterday when we broke
18 from your testimony you were discussing Dr.
19 Gray's criticism of your use of the overlap
20 between his sample of stations and the random
21 sample stations in your cable analysis. And
22 Judge Strickler had asked you a question in

1 response to your statement about a figure of 85
2 percent. And I believe the question was 85
3 percent of what, at which point you asked to see
4 your statement.

5 Your Honor, may I approach?

6 JUDGE BARNETT: You may.

7 BY MR. BOYDSTON:

8 Q And I fumbled around for awhile and
9 couldn't find it. Here it is in front of you,
10 and I think it was specifically table 3 you were
11 interested in. Is that correct?

12 JUDGE STRICKLER: Table 3 in which of
13 her testimonies?

14 THE WITNESS: The amended direct.

15 JUDGE STRICKLER: Thank you. Which
16 page is that?

17 THE WITNESS: Page 8.

18 JUDGE STRICKLER: Thank you.

19 THE WITNESS: Yes. So, if you look at
20 this table, it compares the samples and the
21 overlap of the samples.

22 JUDGE STRICKLER: I'm sorry. This is

1 in your supplemental report or your --

2 MR. BOYDSTON: It is in the
3 supplementary, Your Honor. Page 8 of the
4 supplemental. I'm sorry.

5 JUDGE STRICKLER: Okay. Thank you.

6 THE WITNESS: Yes, it's the
7 supplemental. I'm sorry.

8 JUDGE STRICKLER: Thank you.

9 BY MR. BOYDSTON:

10 Q Dr. Robinson, you were explaining?

11 A Do you have the --

12 JUDGE STRICKLER: Yes, thank you.

13 THE WITNESS: So, if you look at table
14 3, it compares the -- the -- the Robinson sample.
15 Then the Gray sample identifies the overlap and
16 shows in the -- in the far right column that the
17 -- the percentage of total fees in the resulting
18 overlapping example; and by here, I'm talking
19 about royalty fees paid, is, as I had said
20 yesterday, approximately 85 percent.

21 JUDGE STRICKLER: And you testified
22 when you were on the stand earlier in this

1 proceeding that that was no longer a random
2 sample because it combined -- or identified the
3 overlap between two random samples. Is it your
4 testimony then because it represents
5 approximately 85 percent of the total fees that
6 it's more in the nature of a census of the
7 population rather than a sampling of the
8 population?

9 THE WITNESS: Essentially. I mean,
10 certainly it's -- it's a census of 85 percent of
11 the population. And so, the only issue is the
12 representative-ness for the remaining 15 percent.
13 So we know what happens for 85 percent. So all
14 the numbers are correct with respect to that 85
15 percent.

16 JUDGE STRICKLER: But statistically
17 you have no way to extrapolate from that 85
18 percent to the entire population in light of the
19 fact that it's not a random sample any longer?

20 THE WITNESS: I don't know if I would
21 say there's no way I would expect there to be
22 some -- it's not like we have no information from

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1 the 85 percent, but there isn't a -- I can't
2 simply say to you, yes, it's representative of
3 the 15 percent. But I think it's instructive.

4 JUDGE STRICKLER: Thank you.

5 BY MR. BOYDSTON:

6 Q Dr. --

7 JUDGE BARNETT: Excuse me. Dr.
8 Robinson, if you can move that mic just a bit
9 closer. You have a soft voice.

10 THE WITNESS: Is that -- is that
11 better?

12 JUDGE BARNETT: Much.

13 THE WITNESS: Okay. Good.

14 BY MR. BOYDSTON:

15 Q In his footnote 19 to his rebuttal Dr.
16 Gray stated that it is unclear from Robinson's
17 supplemental report whether the sample used in
18 her analysis for satellite is a random sample.
19 Is your sample of stations for satellite analysis
20 a random sample? I think we've discussed this,
21 but please just --

22 A Yes --

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1 Q -- verify again.

2 A -- I think we did discuss that
3 yesterday and I said that in the satellite case
4 it was on the order of 98 to 99 percent of the
5 population, and therefore it proceeded to be a
6 census.

7 Q In paragraph 8 of Dr. Gray's report he
8 alleged or argued that the Tribune data that
9 Robinson relied upon for her analysis does not
10 contain information for 24 hours a day, 7 days a
11 week for every station in her sample. Do you
12 believe that criticism is accurate?

13 A Not exactly. I had 24/7 data for all
14 compensable broadcasts. The only, as what Dr.
15 Gray termed, missing data was WGN broadcasts that
16 were not simultaneously broadcast on WGNA. So
17 they were supposed to be removed.

18 Q But other than that you were covering
19 24 hours a day, correct?

20 A Yes, 24/7. A complete set.

21 Q In paragraphs 29 and 30 Dr. Gray
22 alleged that you did not correctly apply the time

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1 restrictions on certain IPG claimed titles that
2 were reflected in the IPG documents upon which
3 you relied. Do you believe that is a correct
4 statement?

5 A Yes, when I went back and looked at my
6 -- at my -- my analysis, I discovered that there
7 was an error in the coding with respect to these
8 time restrictions. It only showed up in certain
9 instances, but it was there. And if I recall, on
10 -- he had a table. I think it was table 3 on his
11 report where he listed all of the titles which
12 that error impacted. And I would just note that
13 he listed all IPG titles, but he did not list the
14 -- I'm sorry. Would you mind if I take a look at
15 that table?

16 Q Sure. This is -- I'm sorry. This is
17 Dr. Gray's table 3?

18 A Yes.

19 Q In his rebuttal.

20 A Thank you very much.

21 Q It's at page 17 of Dr. Gray's
22 rebuttal.

1 A Yes. So -- so what he does here is he
2 does correctly identify due to this programming
3 code error the incorrectly claimed titles, but
4 what he neglects to do is identify all of the
5 program titles which were incorrectly claimed for
6 MPAA. And so for example, the heading of this
7 table, I think, is -- is misleading. It says
8 Robinson time restriction error materially
9 overstates IPG's claims, where in fact when I
10 corrected this error, it went -- it -- it -- it
11 did -- it could go both ways because too many
12 broadcasts were being claimed by both parties, or
13 the -- the coding did that. And as a practical
14 matter it was -- it -- it -- it went both
15 directions. On average though I would say it --
16 it had a -- there were more -- I had included
17 more titles of -- of MPAA than I had of IPG
18 according to this error.

19 Q And so as a result of the coding error
20 it actually increased the MPAA share, is that
21 correct?

22 A Um --

1 Q In order words --

2 A No.

3 Q In other words --

4 A No, that's not correct. So, it
5 happened more often for MPAA than it did for IPG.

6 So when you do it correctly, IPG's share goes up.

7 Q Right. In other words, the error that
8 he identified artificially increased MPAA's
9 share. Therefore, when you corrected the coding
10 error, it inured to IPG's benefit?

11 A Correct.

12 Q So in fact the error that Dr. Gray
13 pointed out was an error that had benefitted the
14 MPAA?

15 A Correct.

16 Q Although he didn't mention that, did
17 he?

18 A No, he did not.

19 Q Were you surprised that he didn't
20 mention that?

21 MR. MacLEAN: Objection.

22 JUDGE BARNETT: Sustained.

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1 THE WITNESS: I'm sorry. Does that
2 mean I can or cannot answer?

3 JUDGE BARNETT: You may not answer.

4 BY MR. BOYDSTON:

5 Q No, you many not answer.

6 In paragraph 32 Dr. Gray alleged that
7 the title *Tomorrow's World* that you included as
8 an IPG claim retransmitted on WGN is actually a
9 different program than the program claimed by
10 IPG. Is that correct?

11 A I really don't know whether or not
12 there are -- are one or two or more programs
13 named *Tomorrow's World*. I was given that as a
14 title. That's what I used.

15 Q And is your understanding that
16 challenges to various program claim rights has
17 been adjudicated prior to this?

18 A I understand there's been a lot of
19 discussion about the claim rights and that there
20 have been some rulings on it, yes.

21 Q Now, in paragraph 33 of his is
22 rebuttal Dr. Gray alleges that the program

1 lengths -- the program length values of 100, 200
2 and the Tribune data upon which he relies
3 represent lengths of one hour and two hours. Do
4 you recall that?

5 A I do.

6 Q However he stated that you treated
7 those values as 100 minutes and 200 minutes in
8 your analysis. Is that correct?

9 A Yes.

10 Q And after reading Dr. Gray's comments
11 on that issue, did you look into it and find out
12 whether or not in fact that was the way that
13 you'd been calculating the Tribune numbers?

14 A Yes. So, when I saw the -- Dr. Gray's
15 comments, I went back and looked at the analysis.
16 And what I found is that it appears that Dr.
17 Gray's Tribune data and my Tribune data are
18 differently coded. So, in my data 60 means 60
19 minutes and in Dr. Gray's data 100 means 60
20 minutes. I did not realize this at the time that
21 I was conducting my analysis, so I treated -- I
22 treated his data the same way I treated mine,

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1 which is that I -- I -- I used the number to mean
2 the number of minutes.

3 So two things I would point out: One
4 is that this will inure 100 percent of the time
5 to MPAA's benefit.

6 JUDGE STRICKLER: When you say "this,"
7 you mean your error or the reality?

8 THE WITNESS: The error. Because
9 basically I gave them -- they were getting credit
10 for more minutes of broadcasting than IPG. So,
11 100 really only meant 60, but they were getting
12 credit for almost -- you know, they were getting
13 an extra 40 minutes for every hour of
14 broadcasting.

15 So -- so I corrected that error in the
16 set of exhibits that -- 253 forward.

17 BY MR. BOYDSTON:

18 Q In paragraphs 36 and 37 Dr. Gray
19 alleges that you made no adjustment for WGN and
20 that WGN has an inappropriate large impact on
21 your subscriber fee base relative value analysis.
22 Do you agree with Dr. Gray that an adjustment to

1 WGN is necessary or appropriate?

2 A I would agree that WGN has a large
3 impact because it is such a -- has -- because
4 it's -- well, it's by far the largest. I -- I
5 don't have a -- an understanding that it's an
6 inappropriately large impact. It's just a large
7 impact because of the nature of the data.

8 Q In table 4 of Dr. Gray's rebuttal he
9 reports a 95 percent confidence interval for his
10 estimates in MPAA's viewing shares. What is your
11 interpretation of these confidence intervals?

12 A I'm not exactly sure what he's getting
13 at with those confidence intervals, but my kind
14 of big picture impression is he has some very
15 small confidence intervals around his numbers.
16 Confidence numbers in general reflect, you know,
17 an analysis of uncertainty. So given that we
18 have some uncertainty, we want to know the -- the
19 95 percent confidence interval around that
20 uncertainty.

21 What's clear to me based on, you know,
22 looking at his entire analysis where we start

1 with Nielsen data, Nielsen survey data that's
2 being projected to populations where that survey
3 data is in certain sweeps months, where those
4 sweep months are being -- being used to estimate
5 viewing outside of the sweep months and where
6 those years of data are being used to estimate
7 other years of distant viewing by a -- a
8 prediction progression model, there's many, many
9 steps of uncertainty. And it's clear to me that
10 whatever that confidence interval is, it's not
11 reflecting all these types of uncertainty.
12 Probably the last step of uncertainty, but I'm
13 not sure.

14 JUDGE STRICKLER: In other words, you
15 understand that his confidence intervals tacitly
16 assume that all of the data that was uncertain
17 that underlies it was actually treated as certain
18 data when no confidence interval necessary, 100
19 percent correct?

20 THE WITNESS: I think that's a good
21 way of describing it, yes.

22 MR. BOYDSTON: I was now going to turn

1 to Dr. Erdem's rebuttal report. Your Honor, the
2 Honorable Rob True in California is expecting me
3 on the phone. With your permission I'd like to
4 stop here.

5 JUDGE BARNETT: Well, Judge True, he
6 has your presence and our indulgence.

7 MR. BOYDSTON: Thank you, Your Honor.

8 JUDGE BARNETT: We'll be at recess
9 until 12:30.

10 (Whereupon, the above-entitled matter
11 went off the record at 11:25 a.m. and resumed at
12 12:37 p.m.)

13 JUDGE BARNETT: Mr. Boydston.

14 MR. BOYDSTON: Thank you, Your Honor.

15 BY MR. BOYDSTON:

16 Q Dr. Robinson, I want to talk now about
17 the rebuttal report of Dr. Erdem. You've reviewed
18 that. Correct?

19 A Yes.

20 Q Now, at pages 5 and 6 of his rebuttal,
21 Dr. Erdem alleges that programs for Feed The
22 Children should have been excluded from your

1 analysis because the Judge has determined that
2 these programs were not devotional. How does your
3 analysis treat Feed The Children?

4 A It's in program suppliers.

5 Q And it has --- and that's a decision,
6 or that's something that didn't take place last
7 night, but it took place long ago. Correct?

8 A Correct.

9 Q As of this summer, I believe, when
10 supplemental reports were provided.

11 A Correct.

12 Q On pages 6 and 7 Dr. Erdem criticizes
13 your use of a stratified random sample when
14 selecting the sample stations for your cable
15 analysis. What is your response to that
16 criticism?

17 A It is a random sample. It's a standard
18 approach, and the same one used by Dr. Gray.

19 Q And the term --- as a lay person I
20 know what random sample means. What is a
21 stratified random sample, and is there anything
22 bad about a random sample because it's

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1 "stratified?"

2 A No, it's --- there are various ways of
3 creating random samples, and there are times when
4 it is appropriate to use the method of
5 stratifying, which Dr. Gray and I both do in this
6 instance.

7 Q Okay. On pages 7 and 8, Dr. Erdem
8 criticizes your sample of stations in your
9 satellite analysis as non-random, a non-random
10 sample. Is he correct that the sample stations in
11 your satellite analysis is by non-random sample?

12 A Again, in that case it's essentially
13 a census.

14 Q Just as you explained with regard to
15 the program suppliers satellite analysis?

16 A Correct.

17 Q So, instead of going random, you
18 achieve essentially the entire universe and,
19 therefore, there's no reason to randomize. Is
20 that the logic?

21 A The entire population, yes.

22 Q At page 11 of his rebuttal, Dr. Erdem

1 criticizes your use of 2000-2003 data on distant
2 viewership for the purposes of your 2004-2009
3 cable analysis. Do you think that is a reasonable
4 criticism?

5 A It is true that we don't have distant
6 viewing data for 2004 to 2009, and in --- using
7 2000 to 2003 is --- I would prefer to have data
8 in 2004 to 2009. I would prefer to have some data
9 so that I could try to establish a relationship
10 between distant viewing in the earlier period and
11 the later period, but I think it's a reasonable
12 exercise to use those samples from the four years
13 to estimate what's going on later, as Dr. Gray
14 does.

15 I would note that what Dr. Erdem does
16 is he uses a single month from February 1999 in
17 order to do all of his estimation out through
18 2009. So, it's clearly better to use data from
19 2000 to 2003, than one month of data from 1999.

20 Q And in terms of using data, or in
21 terms of trying to identify the incidents of
22 day(part) viewing, in other words, how many

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1 people watch TV at 6 a.m. versus 8:00 at night,
2 are you familiar with the public documents that
3 state that that has not changed in 30 years?

4 A I see ---

5 MR. MacLEAN: Objection. First, it's
6 leading. And, secondly, I didn't understand the
7 question.

8 JUDGE BARNETT: It is leading.

9 MR. BOYDSTON: I'll rephrase.

10 JUDGE BARNETT: Thank you. Sustained.

11 BY MR. BOYDSTON:

12 Q What is your understanding of the ---
13 of day(part) viewing over the years? And when I
14 say what is your understanding of day(part)
15 viewing, do you have an understanding as to how
16 many people, generally speaking, tend to watch TV
17 at say 6 in the morning relative to those
18 watching at 8:00 at night? Do you have an
19 understanding about that, generally?

20 A Yes. I understand, generally, from
21 aggregated Nielsen data that you can see in the
22 newspaper or other reports that I've seen in the

1 course of my work that, you know, Prime Time gets
2 more viewership than, you know, the wee hours of
3 the morning, so there is some --- and, further,
4 that there has been consistency over the years
5 with respect to the basic viewership patterns
6 related to time of day.

7 Q Okay. And from that perspective ---
8 well, strike that. I'd just be repeating.

9 At pages 15 to 16 of doctor --- and on
10 his Table 2, Dr. Erdem describes an alleged error
11 in your calculation, stating that you calculated
12 weighted averages while the weight was the
13 accounting period of the observation. He alleges
14 that in his computation you are giving more
15 weight to observations for the second accounting
16 period in a year than the first accounting period
17 of the year. Is that valid?

18 A No, that's incorrect, and stems from
19 Dr. Erdem's misunderstanding of the data set.
20 Essentially, in approximately 95 percent of the
21 data there is only one observation per signal,
22 and in about 5 percent of the observations there

1 were more than one observation per signal. It
2 turns out that there were two reasons for that.
3 One reason, which I identified, which had to do
4 with how many reporting periods were being
5 reflected in the line. So, for example, a 2 did
6 not mean that it was a second period, it meant
7 that the line referred to two reporting periods
8 in the year. So, that was what Dr. Erdem didn't
9 understand.

10 The other reason that you might have
11 two lines is that --- is what Dr. Erdem realized,
12 which is that --- and there was another variable
13 called reported call sign, so you may have two
14 different reported call signs. So, in that case
15 in the --- of this 5 percent of the --- roughly 5
16 percent of the observations, Dr. Erdem's
17 understanding of why you have multiple lines
18 would lead you to do what he did, which was to
19 sum the numbers. My understanding of why there
20 were multiple lines would lead you to properly
21 average the numbers.

22 He didn't realize that sometimes the

1 reason I understood happened, I didn't realize
2 that the reason that he understood sometimes
3 happened, so he always summed, and I always
4 averaged, but we each should have done some
5 summing and some averaging. And, in fact, if you
6 look at Dr. Erdem's rebuttal report towards the
7 end where he has a table with his final results,
8 I think it's Footnote 50 where he acknowledges
9 that, essentially --- he doesn't put it exactly,
10 he's realized that what I did was correct, but he
11 effectively says that. And he then goes forward
12 and in those instances he averages them, as I
13 did. So, when I went back and corrected it, in
14 the proper instances I summed it, and I kept the
15 averages when that was appropriate.

16 In any case, as Dr. Erdem said in his
17 results, it didn't change much, and for my
18 results it didn't change much either.

19 JUDGE FEDER: Excuse me. When should
20 you sum, and when should you average?

21 THE WITNESS: If it's two different ---
22 if it's broadcasting from two different

1 locations, then you want to sum it. But if it's -
2 -- let's say the affiliation changed, then it
3 would have two lines, but it's really the same --
4 - it's really reflecting the same data, so you
5 would want to average it.

6 JUDGE FEDER: Okay. When you say these
7 are the accounting periods, are you talking about
8 for the --- for purposes of cable statements of
9 account?

10 THE WITNESS: Yes, for the two six-
11 month periods.

12 JUDGE FEDER: Okay, thank you.

13 BY MR. BOYDSTON:

14 Q And when you said "affiliated," are
15 you referring to different call signs, or am I
16 mistaken?

17 A No, I think it's like if you changed
18 your network affiliation.

19 Q Thank you. On page 15, his Table 1,
20 Dr. Erdem alleges that you made a computational
21 error related to distant subscribers over
22 multiple markets because you calculated the

1 average of the subscribers over those markets. I
2 beg your pardon. I think this is exactly what you
3 just described, isn't it?

4 A Yes, I think so.

5 Q Yes. Okay.

6 A Yes.

7 Q At pages 16 and 17, Dr. Erdem
8 indicates that your programming code contained an
9 error in how it dropped programs that were not
10 claimed in a given year. What is your comment on
11 that, or what is your reaction to that?

12 A Could I take a look at his report,
13 please?

14 Q Yes. Actually, let me specify. I don't
15 think I asked the question very well.

16 Dr. Erdem was saying that your
17 programming code resulted in programs --- not a
18 proper allocation of programs similar to the
19 criticism by Dr. Gray in the same regard.

20 A Yes. With sort of that time
21 restriction error in the code, so that same
22 little bit of code impacted the devotional

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1 analysis, as well as the program supplier
2 analysis. So, I corrected that error in the
3 programming code. And, similarly, not only did it
4 affect IPG programming, but it affected SDC
5 programming, as well.

6 Q And just --- since it did occur in
7 both situations in both the program suppliers
8 category and the devotional category, maybe just
9 give us -- describe to the Judges a little more
10 specifically what the code error was in terms of
11 time --- we know it had to do with time
12 parameters. I believe what it did is it didn't
13 correctly --- where the rights to a program, IPG
14 might have the rights to a program for three
15 years, my understanding is the coding might have
16 been incorrect and said it was four years. Is
17 that correct?

18 MR. MacLEAN: Objection; leading. Maybe
19 Dr. Robinson can explain in her words.

20 JUDGE BARNETT: Sustained.

21 MR. BOYDSTON: Yes.

22 BY MR. BOYDSTON:

1 Q Please explain the time, rather than
2 my amateurish attempt to do so.

3 A There was a set of circumstances where
4 when I intended to say choose --- select only one
5 year of programming to be allocated, the code was
6 taking a set of years instead of just the one
7 year.

8 Q Okay. At pages 17 and 18, Dr. Erdem
9 alleges that you double count some programs that
10 are claimed as either devotional or program
11 suppliers titles by IPG. Is that correct?

12 A In my initial report, there were
13 titles that I understood, and I mean in the
14 summer, there were titles that I understood had
15 not yet been determined whether they were going
16 to be in the program supplier or devotional title
17 --- area. So, in that initial report they were in
18 both, because I didn't know which one they were
19 supposed to be in. And then there was always the
20 intention to remove them, and then I removed
21 them.

22 Q Okay. Going to the previous topic

1 about correcting the programming code error
2 regarding time, in the devotional category when
3 you redid that, do you recall whether or not that
4 correction of the code error helped IPG more, or
5 helped the SDC more?

6 A It did go up and down depending on the
7 year and on cable versus satellite. But, in
8 general, over the entirety of it, it inured more
9 to IPG's benefit to fix the correction.

10 Q Thank you. Turning now to your
11 rebuttal of Dr. Gray's affirmative report, do you
12 recall reviewing Dr. Gray's affirmative report?

13 A I do.

14 Q And how is it that you perceived Dr.
15 Gray's measures of viewership, how did he relate
16 viewership to his measures of relative value?

17 A His measures of viewership are one and
18 the same as his measures of relative value.

19 Q Do you have any criticisms of that?

20 A Well, viewership is not a direct
21 measure of value in the hypothetical negotiation
22 between the CSO and the copyright holder. That

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1 said, it does --- viewership does relate to
2 things that matter in that hypothetical
3 negotiation, so I think it's sensible to look at
4 viewership data. I think to have a direct measure
5 which is nothing but viewership and to suggest
6 that that is a direct measure is not as
7 reasonable.

8 JUDGE STRICKLER: Dr. Robinson,
9 question. In the hypothetical that you're
10 hypothesizing, are you hypothesizing a
11 negotiation between the copyright holder and a
12 CSO, or the station as a whole and the CSO?

13 THE WITNESS: The copyright holder and
14 the CSO.

15 JUDGE STRICKLER: As if the CSO was
16 going on a one-to-one negotiation with regard to
17 each copyright holder of each program?

18 THE WITNESS: Correct.

19 JUDGE STRICKLER: Thank you.

20 BY MR. BOYDSTON:

21 Q Have you --- did you review the data
22 upon which Dr. Gray relied?

1 A Yes.

2 Q And do you believe that he had data
3 that was complete, sufficiently complete on
4 distant viewership for his sample of stations and
5 broadcasts to make his projections?

6 A Well, as we talked about recently a
7 few minutes ago, he had data from 2000 to 2003,
8 with a little bit in 2004 for satellite that he
9 used to project for the other --- for the 2004 to
10 2009 period. So, there's a series of issues. One
11 is that there is no data, essentially, for 2004
12 to 2009, so he needs to predict the data. So,
13 then the question is what is the quality of the
14 data that he's using between 2000 and 2003 in
15 order to predict the data that he doesn't have
16 for 2004 to 2009?

17 And, further, there's the issue of how
18 good a job does he do with the data that he has
19 to do the prediction? So, I think that there are
20 clearly some unexplained questions about the data
21 from 2000 to 2003; in particular, this issue of
22 the unreported standard errors from Nielsen, and

1 the large quantity of zero viewing, which would
2 appear to reflect that the Nielsen samples are
3 not large enough to be --- either not large
4 enough, or not some other issue with the survey
5 process that's not picking up the viewership. So,
6 does that answer your question?

7 Q It does. Now, you referred to two
8 factors there, and let me go to the second one.
9 The first one is fairly self-explanatory, but the
10 second one was, you know, I don't know if you
11 used the term but it was situations in which no -
12 -- there's no --- there's zero viewing; in other
13 words, Nielsen picks up no indicia of anyone
14 viewing.

15 A Correct.

16 Q Now, with regard to that, let me ask
17 you. You've encountered this issue before.
18 Correct?

19 A Yes.

20 Q I believe you testified in the 2000 to
21 2003 proceedings. Is that correct?

22 A Yes.

1 Q And also the '98-'99 cable devotional
2 proceedings?

3 A Yes.

4 Q And in those proceedings, did you
5 encounter the same problem?

6 A Yes.

7 Q And did you review testimony from
8 those proceedings in coming to that conclusion?

9 A I mean, I think I had that conclusion
10 prior to reviewing the testimony.

11 Q Thank you. Okay. I understand.

12 Let me ask you to take a look at
13 what's been marked as Exhibit 243, which would be
14 in the Independent Producers Group Volume II
15 towards the end.

16 A I'm sorry, what was the number, again?

17 Q 243. And I'll represent this is the
18 testimony of Paul Lindstrom from --- executed in
19 1999.

20 A Okay.

21 Q And do you recall reviewing this
22 testimony of Mr. Lindstrom's?

1 A I do.

2 Q And I think you said that you had ---
3 you already had a view as to zero viewing before
4 you looked at this. Did this impact your view in
5 any particular way, or did it reinforce it, or
6 otherwise?

7 A Yes. Generally, I find this --- I
8 recall finding this testimony consistent with,
9 you know, my understanding that there are large
10 standard errors in the Nielsen data, and that the
11 data that I have, I don't have the measures of
12 those standard errors.

13 Q But you're saying that within this
14 testimony you read referenced such standard
15 errors?

16 A Yes.

17 MR. BOYDSTON: And, Your Honor, I guess
18 before I go further, I'd like to move to admit
19 Exhibit 243.

20 MS. PLOVNICK: Your Honor, we have a
21 written objection to this exhibit. That, and then
22 also I would say relevance because this is from

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1 the 1990 to '92 proceeding. It isn't related to
2 any of the royalty years that are at issue here.

3 JUDGE BARNETT: I'm sorry. I thought
4 Mr. Boydston said '99.

5 MR. BOYDSTON: It was dated in '99,
6 yes.

7 MS. PLOVNICK: That is the date of the
8 declaration, but that is not the royalty years at
9 issue.

10 MR. BOYDSTON: And we're not contending
11 it is. Otherwise this, nevertheless, was the ---
12 it was part of the proceedings at that time. And
13 Mr. Lindstrom --- we brought this up before, and
14 Mr. Lindstrom discusses the zero viewership, and
15 that it's relevance.

16 MS. PLOVNICK: The subject of our
17 written objection on this one is that it's
18 improperly --- it is not proper prior designated
19 testimony because the rest of the record from
20 this proceeding, which would include the oral
21 testimony, hasn't been designated and isn't part
22 of this exhibit. And the Judge's regulation

1 placed the burden on IPG to do that. So, that's
2 the rest of my objection, in addition to the
3 relevance.

4 JUDGE BARNETT: Any objection, Mr.
5 MacLean?

6 MR. MacLEAN: No, Your Honor.

7 JUDGE BARNETT: 243 is admitted subject
8 to the pending written objection.

9 (Whereupon, the above-referred to
10 document previously marked as IPG
11 Exhibit 243 for identification, was
12 received in evidence.)

13 MR. BOYDSTON: And just very quickly,
14 Your Honor, just for --- with regard to that last
15 point about not including the entire transcript.

16 JUDGE BARNETT: No, you can respond in
17 writing.

18 MR. BOYDSTON: Okay, we will then.
19 Thank you.

20 BY MR. BOYDSTON:

21 Q Dr. Gray, could you please take a look
22 at what's been marked as Exhibit 244, and let me

1 know if you recognize this document?

2 MS. PLOVNICK: You said Dr. Gray, but

3 ---

4 MR. BOYDSTON: I beg your pardon.

5 BY MR. BOYDSTON:

6 Q Dr. Robinson, excuse me.

7 A Okay.

8 Q And have you seen this before?

9 A Yes.

10 Q And, in fact, this was I think
11 admitted as an exhibit in the prior two
12 proceedings. Is that your recollection?

13 A Yes.

14 Q And did this also impact your view on
15 the incidents of zero viewing?

16 A Yes. I mean, it's essentially a
17 computation of the zero viewing.

18 MR. BOYDSTON: Your Honor, I'd like to
19 move to admit Exhibit 244.

20 MR. MacLEAN: Your Honor, may I voir
21 dire?

22 JUDGE BARNETT: Yes.

1 BY MR. MacLEAN:

2 Q Dr. Robinson, who prepared Exhibit
3 244?

4 A My recollection is that this document
5 was prepared by IPG, but that I prepared a --- I
6 did, basically, I redid the analysis myself, and
7 got the same --- I think exactly the same, but if
8 not exactly the same, very similar results.

9 Q So, Exhibit 244 itself was provided to
10 you by IPG, and not prepared by you.

11 A I think that's just what I said, isn't
12 it?

13 Q And who --- do you know who at IPG
14 prepared Exhibit 244?

15 A I believe it was Mr. Galaz, but I'm
16 not sure.

17 Q What's the basis for that belief?

18 A Just recollection.

19 MR. MacLEAN: Your Honor, objection for
20 lack of foundation.

21 MR. OLANIRAN: Same objection, Your
22 Honor.

1 JUDGE BARNETT: And, Dr. Robinson, you
2 said you did something with this information. Is
3 that reflected in this exhibit, or you did it
4 from that?

5 THE WITNESS: No, I didn't do something
6 with this information per se. I did the same
7 analysis myself.

8 JUDGE BARNETT: Okay.

9 THE WITNESS: Still got the same
10 results.

11 JUDGE BARNETT: Exhibit 244 is refused.

12 BY MR. BOYDSTON:

13 Q So, just to confirm, you did --- and
14 that exhibit is not part of the record, but you -
15 -- just to confirm, I think what you said is you
16 did the same analysis.

17 A Yes.

18 Q And what --- I think you said so, but
19 just so I understand. When you did the same
20 analysis, what result did you reach?

21 A As a general ---

22 MR. MacLEAN: Objection. Your Honor, we

1 had asked, obviously, in this case for a
2 production of documents underlying testimony. If
3 she's about to testify as to the contents of a
4 document that she prepared that hasn't been
5 produced to us, or is not in the exhibit binder,
6 we object to her testifying. This is also a Best
7 Evidence objection.

8 JUDGE BARNETT: Respond to that
9 objection.

10 MR. BOYDSTON: Well, she said she
11 didn't prepare a document, she simply did the
12 calculation on her own. And I believe she said
13 came up with her own --- came up with the same
14 conclusion.

15 JUDGE BARNETT: Sustained.

16 MR. BOYDSTON: Your Honor, also, it was
17 in our exhibit binder the entire time, so I don't
18 know why they're saying it wasn't ---

19 JUDGE BARNETT: What was?

20 MR. BOYDSTON: That document, they said
21 it wasn't part of exhibit ---

22 JUDGE BARNETT: Her?

1 MR. BOYDSTON: She didn't create a
2 document.

3 JUDGE BARNETT: Okay. So, the testimony
4 is --- the objection is sustained. She cannot
5 testify as to a calculation that she did out of
6 the blue.

7 BY MR. BOYDSTON:

8 Q Now, please take a look at what's been
9 marked as Exhibit 245. And does --- do you ---
10 have you seen --- are you familiar with Exhibit
11 245?

12 A I mean, I'm familiar with it. I think,
13 again, we're talking about something from, I
14 believe, a different proceeding. And I recall
15 doing these types of computations. And, you know,
16 I recall the general results looking correct, but
17 as to whether I prepared this document, I don't
18 think I prepared this document, or not. I don't
19 recall.

20 Q Well, let's move away from the
21 document for the moment. Do you have an
22 understanding as to the reliability of Nielsen

1 conclusions based upon ratings calculations that
2 end up identifying fewer than 5,000 viewers at a
3 time watching a particular station?

4 A Well, I mean, it's the same issue we
5 were discussing a moment ago, which is that we
6 don't have the standard errors. We know that
7 they're projections, so 5,000 --- it certainly
8 does not mean that 5,000 people said that they
9 watched a show. So, you know, we don't know what
10 the standard errors are. They haven't been
11 provided. There's, as I understand it, evidence
12 from Mr. Lindstrom that they're large, so when
13 you have a large standard error, you know, a zero
14 might not be distinguishable from 5,000. So, it's
15 --- the basic issue is one of, you know, trying
16 to find rare events, when you're trying to ---
17 when you have a relatively small sample for the
18 thing that you're trying to estimate, just
19 because you get a zero doesn't mean you're
20 learning a lot about what's really going on in
21 that population.

22 Q Okay. Does this document refresh your

1 recollection as to the incidents of situations in
2 which the percentage of broadcasts, excuse me,
3 the Nielsen percentage of broadcasts that
4 identify audiences under 5,000 people is common?

5 MR. MacLEAN: Objection. Your Honor,
6 the witness hasn't even testified to not having a
7 recollection, so lack of foundation for
8 refreshment of recollection. And we have the same
9 objection as to the last bit of testimony to the
10 extent that Dr. Robinson is being asked to
11 testify as to the contents of a document or a
12 calculation that was not produced to us in
13 discovery.

14 MR. BOYDSTON: Your Honor, this was
15 produced. This is not a secret. It's been an
16 exhibit here, and it was produced in discovery.
17 But as to the other issues, I think that
18 misstates her testimony. I think she said she did
19 have a recollection about the incidents from Mr.
20 Lindstrom and other places, that the incidents of
21 findings a results with fewer than 5,000 was
22 prevalent.

1 JUDGE BARNETT: What was the --- could
2 you repeat the question?

3 MR. BOYDSTON: Certainly, Your Honor.
4 The question is --- it was couched as, did this
5 document refresh your recollection that in
6 situations in which Nielsen calculations
7 reflected broadcasts reaching less than 5,000
8 people was common? And I was asking if that ---
9 if this refreshed her recollection as to that,
10 because she said that already.

11 JUDGE BARNETT: Sustained.

12 BY MR. BOYDSTON:

13 Q Let me ask you to take a look at
14 what's been marked as Exhibit 246. And, actually,
15 before you look at 246, first let me ask you
16 this.

17 Do you have an understanding as to the
18 average number of Nielsen viewers identified
19 across all Nielsen diary broadcast data? In other
20 words, if you take ---

21 A I understand the question.

22 Q Okay, thank you.

1 A I think that I recall a number of
2 about 10,000 nationwide.

3 Q Okay. Now, going back to the specific
4 ---

5 A I'm sorry. Could you ask that --- was
6 that question viewers or households, the last
7 question?

8 Q That was viewers.

9 A Oh, I thought you said households. I
10 thought you were asking about the size of their
11 sample. Size of the sample I recall being about
12 10,000.

13 Q Okay. Going back to Dr. Gray's
14 analysis, specifically, is Dr. Gray's regression
15 for predicting viewership a reasonable and
16 reliable model in your view?

17 A I think there are some modifications
18 which make it more reliable than the
19 specification that he has. I think it has some
20 merit. I am concerned about the large number of
21 zero viewing instances in the data on which it
22 relies, and I'm concerned about some of the

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1 specification choices. You know, but as an
2 overarching principle, you know, the idea of
3 using, you know, data in a period that you do
4 have in order to, you know, predict or estimate
5 data in another period is a reasonable thing to
6 do, and one of the reasons why we have statistics
7 and econometrics.

8 Q Okay. Now, in his regression analysis,
9 my limited understanding of regression analysis
10 is that one of the places you start from is
11 having a base year, and then you work for that.

12 JUDGE FEDER: I missed that. Having a?

13 MR. BOYDSTON: A base, B-A-S-I, base
14 year.

15 JUDGE FEDER: Okay, thank you.

16 MR. BOYDSTON: I guess that's wrong.
17 You're looking quizzical ---

18 THE WITNESS: You said B-A-S-I.

19 MR. BOYDSTON: I'm just --- my brain is
20 --- B-A-S-E is what I meant.

21 BY MR. BOYDSTON:

22 Q Can you explain how you go about

1 creating a regression analysis? And if there's
2 something called a base year in it, tell me what
3 it is.

4 A So, that's not a generally true
5 statement, not --- regression analysis doesn't in
6 general have a base year, but it's perfectly
7 typical to have a regression where you might have
8 a base year. It really has to do with the concept
9 of categorical variables, and in this case the
10 category is years. So, what Dr. Gray does is he's
11 using data for 2000 and 2003, so he has what we
12 call a dummy variable, which basically takes off
13 a zero or a one. So, if the observation comes
14 from say 2003, then the 2003 dummy variable gets
15 a one, and if --- and the 2002 variable in that
16 instance would get a zero, as would the 2001
17 variable.

18 Now, for technical reasons whenever
19 you have that type of a setup in your regression,
20 you can always only have what we call N minus 1
21 dummy variables. So, if you've got four years,
22 you get three dummy variables. Basically, you

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1 can't run the regression if you try to put all
2 four in, it won't work.

3 And, effectively, what that means, and
4 this kind of gets to that base year idea. Let's
5 say you had data from 2000 to 2004, and let's say
6 that you had dummy variables then for 2001, 2002,
7 and 2003. Did I say 2000-2004? I meant 2000-2003,
8 sorry. And let's say you put in dummy variables
9 for 2001, 2002, and 2003. In that case, 2000
10 would be your base year, because all of your
11 results essentially are being kind of measured
12 against that one that you left out.

13 Q And in this particular situation, do
14 you have --- are you critical of Dr. Gray's use
15 of the year 2000 as a base year for his
16 calculations?

17 A Yes, I'm critical of two things. One
18 is the use of 2000 as a base year because it's an
19 arbitrary choice. And because when I looked at
20 changing it to 2001, 2002, 2003 it changes the
21 results. But there's a --- but the second piece
22 provides some additional context, and that's

1 because this regression is being run for the
2 purpose of predicting future values of distant
3 viewing for 2004 to 2009.

4 So, by using the year variables at
5 all, he's setting up a situation where when he
6 wants to predict the future he doesn't have
7 values for those variables.

8 JUDGE STRICKLER: Are you saying he
9 really is only doing his regression based on the
10 2000 year numbers because he's treated 2001-2003
11 as the dummy variables?

12 THE WITNESS: Exactly.

13 JUDGE STRICKLER: So, he didn't really
14 use all of those years.

15 THE WITNESS: Well, he used them in
16 coming up with the coefficients of the regression
17 model that he uses to predict, but then when he
18 wants to predict all those dummy variables are
19 always going to be zero because it's never going
20 to be 2001, 2002, or 2003.

21 JUDGE STRICKLER: So, in other words,
22 coefficients, they don't add anything to the ---

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1 THE WITNESS: They don't add anything
2 to it. So, what you typically do when you want to
3 have a regression that you're going to use to
4 predict in that way, is you would use variables
5 that you will have values for in the future, you
6 know, because you have a dependent variable that
7 you're trying to estimate. You have a set of
8 independent variables. If you want to predict
9 your dependent variable based on your independent
10 variables, you've got to have values for the
11 independent variables.

12 JUDGE STRICKLER: And run your
13 regression with a different dummy each time?

14 THE WITNESS: With a different choice.
15 So, for example, what I did is I replaced the
16 year dummies with a value for the total annual
17 royalty fees. So, this was something that was
18 supposed to be essentially a proxy for the year,
19 but which we would have values for in 2004, '5,
20 '6, '7, '8, and '9.

21 JUDGE STRICKLER: Well, did you run the
22 --you say that the problem with his regression

1 was that he only based it, in essence, on the
2 2000 statistics that he had. Did you then rerun
3 his numbers by changing which three were the
4 dummy variables, and which one was the ---

5 THE WITNESS: Yes, I did two different
6 things. One is, first, I reran them all trying
7 every year.

8 JUDGE STRICKLER: Is that in your
9 rebuttal report?

10 THE WITNESS: Yes.

11 JUDGE STRICKLER: Okay.

12 JUDGE BARNETT: Actually ---

13 JUDGE STRICKLER: Just hold your
14 thought, if you don't mind.

15 MR. BOYDSTON: No, I'm sorry, Your
16 Honor. I was going to direct --- there's a figure
17 that shows this. That's all.

18 JUDGE STRICKLER: We'll get there. Go
19 ahead.

20 THE WITNESS: And then, secondly, I
21 also replaced the --- I also ran a different set
22 of regressions replacing the year dummies with

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1 this annual fees variable as a proxy.

2 JUDGE STRICKLER: But separate and
3 apart from the proxy, you actually --- you
4 changed which three were dummies.

5 THE WITNESS: Yes.

6 JUDGE STRICKLER: So, you did two
7 different things.

8 THE WITNESS: Two different things..

9 JUDGE STRICKLER: Why did you have ---
10 I'm confused. Why did you need to do the
11 alternative measure with the proxy if you were
12 otherwise going to run it correctly, what you
13 understood to be correctly?

14 THE WITNESS: No, because that doesn't
15 correct. I just wanted to see if that influenced
16 his results, which it did.

17 JUDGE STRICKLER: If ---

18 THE WITNESS: You can't do it
19 correctly.

20 JUDGE STRICKLER: What can't you do
21 correctly?

22 THE WITNESS: If you use the year

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1 dummies, because in the -- either sample period
2 you don't --- you'll never have the value. So,
3 when you run that --- when you're looking at
4 distant viewing and all these independent
5 variables that Dr. Gray puts in, you're saying
6 you think that this is the relationship, that
7 these independent variables explain what's going
8 on here. So, if --- and he did have statistical
9 significance on his year dummies, so the year
10 mattered.

11 So, if you want to predict going
12 forward, you had this conundrum because the year
13 matters, but you don't have the year, because
14 when you use it to predict, what you do is you
15 fill in the values for the variables, and you
16 multiply by the coefficients that you got from
17 your prediction model. But there is no
18 coefficient on 2006, or 2007, or 2008 that you
19 can use, so it sort of --- it structurally just
20 doesn't work. It doesn't make sense.

21 JUDGE STRICKLER: And, counsel, you're
22 going to point her to a particular page?

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1 MR. BOYDSTON: Well, I thought it might
2 be helpful. Hopefully, it will be.

3 BY MR. BOYDSTON:

4 Q Could you take a look at what's been
5 marked as Exhibit 206 in the binder.

6 A Yes.

7 Q And --- actually, before we go into
8 this, I feel like maybe there was more than you
9 wanted to explain, perhaps, to the subject
10 brought up by Judge Strickler.

11 So, explain --- perhaps explain to us
12 the rest of your analysis that you were
13 explaining to Judge Strickler, unless you were
14 done. It seemed to me like there was something
15 more to come. And if I'm incorrect, I apologize.

16 A Well, for the purposes of sort of
17 tying up everything we'll think about when we
18 look at this chart, I'll just mentioned that I
19 also ran the analysis putting national ratings
20 in. And I also ran the analysis using actual
21 viewership where present, and ---

22 Q If I could just stop you for a second.

1 Are you looking at Exhibit 207?

2 A I think so.

3 Q Yes, I meant to say 206. If I ---

4 A Yes, I was wondering.

5 Q I apologize to everyone. I meant to
6 say 206. I don't know if I did.

7 JUDGE STRICKLER: I think you did say
8 206. That's where I went, anyway.

9 MR. BOYDSTON: Okay. Well, looking ---
10 (Simultaneous speaking.)

11 BY MR. BOYDSTON:

12 Q So, with regard to Exhibit 206, does
13 that reflect what you have been explaining to us?

14 A Yes. So, I think it would probably be
15 easiest if I just explain the chart. So,
16 basically, this computes IPG's viewership share
17 under various versions of Gray's model. So, the
18 first one, I guess I would call it Red Number
19 One, this Gray Model 3. That's ---

20 MR. MacLEAN: Your Honor, I'm going to
21 object to a description of the content of this
22 document which has not been offered or admitted

1 into evidence.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move to admit Exhibit 206.

4 JUDGE BARNETT: Is this not a table or,
5 excuse me, a figure from her written testimony?

6 MR. BOYDSTON: Her written rebuttal
7 testimony, yes.

8 JUDGE BARNETT: Which is in evidence.

9 MR. MacLEAN: Actually, I don't believe
10 her written rebuttal testimony has been offered.

11 MR. BOYDSTON: I think that's correct.
12 Your Honor, I'd like to offer Dr. Robinson's
13 written direct testimony and her amended written
14 direct testimony, and her supplemental written
15 direct testimony, and her rebuttal testimony as
16 to the devotional category, and her rebuttal
17 testimony as to the program supplier category be
18 admitted.

19 JUDGE BARNETT: I don't think those
20 have been marked as exhibits. Is that correct?

21 MR. BOYDSTON: That's correct.

22 JUDGE BARNETT: They were not included

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1 in your exhibits.

2 MR. BOYDSTON: That's correct, Your
3 Honor.

4 JUDGE BARNETT: Mr. MacLean?

5 MR. MacLEAN: I'm going to try to go
6 through all of these. We have the SDC --- the SDC
7 have no objection to the admission of Dr.
8 Robinson's direct or amended direct testimony.
9 However, we have objections to most of the
10 figures and tables in Dr. Robinson's rebuttal
11 testimony to the MPAA, and rebuttal to the
12 testimony to the SDC.

13 I can tell you which particular tables
14 I'm referring to. But as a general matter before
15 I go through the list of tables, practically all
16 of them include --- or all of them to which we
17 object include Envoy programming in the
18 devotional category.

19 Moreover, Dr. Robinson in her rebuttal
20 testimony, and this is particularly directed to
21 the SDC, although it is incorporated to some
22 degree in her MPAA rebuttal testimony, adopts an

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1 entirely new methodology and that number presents
2 as in the Settling --- in the devotional
3 claimants category. That is completely improper
4 rebuttal. It should be taken out completely. In
5 essence, she uses a methodology I would say based
6 upon, or in some ways based upon Dr. Gray's
7 methodology but then applies it to programs
8 claimed in the devotional category, presents it
9 as a new methodology in the devotional category
10 for the first time in her rebuttal statement.

11 Now, we did not receive documents
12 underlying this all new methodology for the
13 devotional category until, with respect to
14 satellite, three days after underlying documents
15 --- documents underlying rebuttal testimony to.
16 With respect to cable, we didn't receive it until
17 last Thursday, two business days before this
18 hearing.

19 There's a real issue. The system that
20 goes into creating these figures, the figures
21 that I'm referring to in her rebuttal testimony
22 that she is now for the first time trying to

1 present in the devotional category consists of
2 about thousands, thousands of separate files,
3 about 30 something of which are coded in Stata,
4 consisting collectively of thousands and
5 thousands of lines of code.

6 We have had our expert witness, Dr.
7 Erdem and his team and KPMG ever since we first
8 received Dr. Robinson's rebuttal testimony, and
9 three days later we received underlying documents
10 with respect to the satellite system working
11 essentially every day up until today. They're
12 still working on it, trying to get us to the
13 point where we can understand what we're seeing
14 here for the first time.

15 It's a very, very complicated system.
16 We had them working over the Easter holiday
17 weekend. We submitted our objections both in
18 writing and by motion. And the bottom line is
19 standing here today, I am simply not prepared to
20 be able to conduct an effective cross-examination
21 and present effective rebuttal for this entirely
22 new methodology in the devotional category

1 presented for the first time in Dr. Robinson's
2 rebuttal testimony. It would be prejudicial to
3 allow this on even a provisional basis for two
4 reasons. One, I'm not capable of completing the
5 record here today. I'm not capable of conducting
6 an effective cross-examination or present a
7 rebuttal.

8 Secondly, even if I were allowed to
9 come back later to do that, we meanwhile have to
10 have our team at KPMG that have been working for
11 two straight weeks on this doing their best to
12 arm me with what I can be armed with in the time
13 allotted. I'm going to need weeks longer having
14 them ticking away at that clock. This is not
15 free, not by any stretch of the imagination is it
16 free, just to get me to the point where I can
17 effectively complete the record by conducting a
18 cross-examination and rebuttal.

19 Therefore, we object. You've already
20 ruled with respect to the inclusion of Envoy
21 programs, which all of these charts include in
22 the devotional category. But we further object

1 with respect to the admission of anything
2 relating to the so called --- Dr. Robinson refers
3 to it as the Robinson-Gray methodology. It should
4 not come in in any way, shape, or form,
5 particularly within the devotional category where
6 we have not had a chance to respond to it at all.

7 I should add that the documents that
8 Mr. Boydston handed to us during the morning
9 break for the first time included Dr. Robinson's,
10 as I understand it, recalculation of the so
11 called Robinson-Gray methodology, I take it that
12 he --- that these are about to be offered. We
13 still --- we confirmed this over lunch, still
14 have not received the underlying documents to
15 those revised exhibits. We received the
16 underlying documents to the Robinson methodology
17 revised exhibits, but not to this Robinson-Gray
18 methodology revised exhibits. Have not received
19 the code, and bear in mind I'm talking about just
20 the code alone, just the standard code, 30
21 something files with thousands of lines of code.
22 Standing here today we don't even have it, so for

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1 those reasons I object to any admission
2 provisionally or otherwise of any chart or table
3 relating to the Robinson-Gray methodology.

4 And now I can tell you as to which
5 Robinson tables we object, in particular. This
6 objection would apply to Dr. Robinson's reply to
7 --- in her rebuttal to the SDC, this would be
8 Tables 1, 2 and the associated text, Figures 2
9 and 3 and the associated text. With respect to
10 her rebuttal to MPAA, again, I --- this does
11 apply to Tables 1, 2, 3, 4, 5, 6, 7, 10, and 11 -
12 --

13 JUDGE STRICKLER: Can you say that
14 slower?

15 MR. MacLEAN: 1, 2, 3, 4, 5, 6, 7, 10,
16 and 11 and associated text, and Figures 1, 2, 3,
17 and 4 and associated text. Obviously, what we're
18 most concerned about, of course, are those in the
19 --- in her rebuttal to the Settling Devotional
20 Claimants. It also applies to a whole panoply of
21 IPG exhibits that relate to that which, since
22 they haven't been offered they won't be off the

1 list, but we'll --- we can flag them as they come
2 up, if they come up.

3 MS. PLOVNICK: MPAA has a motion that
4 we briefed on our papers here directed at Dr.
5 Robinson's rebuttal statement and exhibits, and
6 I'm just moving, for the record looking at 207,
7 I'm sorry, 206 and 207, especially 207, it's
8 clear from looking at this that the program title
9 issue has not been updated in this particular
10 exhibit. So, we would object on that basis.

11 In addition, I think we stated that in
12 our brief, but we just want to state it on the
13 record, that the basis of our objection is that
14 the March 13th order is not adequately captured
15 in these documents. And we would also join Mr.
16 MacLean in presuming that the exhibits that were
17 presented to us at the break are offered at any
18 point, we object to those. I don't know if
19 they've been offered yet, but if they are
20 offered, I think it starts with about Exhibit
21 195, we will be objecting to those, because we
22 don't have the underlying documents for that

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1 either. And we have our continuing objection to
2 those for the basis that Mr. Olaniran said this
3 morning.

4 JUDGE BARNETT: Mr. Boydston?

5 MR. BOYDSTON: Let me start with
6 everything was produced at 6 a.m. on March 30th
7 to the SDC by Jeff West. Now, since then they've
8 asked us for different iterations of those files,
9 and we have attempted to comply, and I believe
10 have complied with them. The only thing that
11 hasn't been provided is the backup for the files
12 that were created early this morning for Exhibits
13 195, 196, 224, and 225, just because it was only
14 done early this morning. We will be doing that;
15 in fact, Mr. West may have done so, and probably
16 has done so by now by email. Maybe not, but that
17 is in the works to do that.

18 Those two documents are a conclusion
19 of Dr. Robinson's analysis in this regard.

20 JUDGE STRICKLER: Which two documents?

21 JUDGE BARNETT: It's actually four.
22 They're revised versions of 195, 196 ---

1 JUDGE STRICKLER: The ones you just
2 said. Okay.

3 MR. BOYDSTON: 224 and 225. Now, 206 is
4 not being offered as the conclusion, the
5 conclusion are the four exhibits I just said. 206
6 has not been updated yet, but we're not offering
7 it for its conclusion. It's merely illustrative.
8 The conclusions are in these four that I just
9 mentioned. And as I said, those back --- that
10 electronic backup is imminently going to be
11 provided, if it hasn't been provided already. It
12 would have been provided already except the
13 adjustments that were made in the last 24 hours
14 impacted that in some regard.

15 With regard to the --- I think I
16 answered that about the data. There was a long
17 litany of arguments. If you have any questions
18 about anything, please let me know. I don't know
19 if I covered every single aspect of this. But, in
20 general, what happened was we produced this with
21 the rebuttal statement. We produced the
22 underlying support for it early in the morning of

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1 March 30th, and the only thing not in their hands
2 is the relatively limited backup for these four
3 documents which are the conclusions, which will
4 be in their hands imminently.

5 MS. PLOVNICK: Your Honor, I would just
6 --- we object to the characterization that 206
7 and 207 can be illustrative of these other
8 documents. They do not reflect a completely
9 changed claimed challenges -- as adjudicated by
10 the Judges in their March 13th order -- so we
11 think they are not illustrative. We object to
12 that characterization.

13 We also --- I think Mr. Boydston may
14 have misspoken about March 30th being a date that
15 he produced documents to us, or to anyone.

16 MR. MacLEAN: Actually, I think it was
17 March 30th, but they were due on March 27th.

18 MS. PLOVNICK: I thought you were
19 talking about the things that you just simply
20 produced late last night and this morning, and
21 maybe I'm confused.

22 MR. MacLEAN: We received in production

1 late last night, as we understand it sitting here
2 today, recognizing we've only had --- our expert
3 has only had a couple of hours to review it, are
4 the underlying --- the codes underlying the
5 revised exhibits 163 to 193. We now have those
6 codes. We received them last night. What we do
7 not have are the codes underlying, and bear in
8 mind we're talking about 30 something codes here,
9 underlying the brand new exhibits, well, the
10 exhibits replacing ---

11 MR. BOYDSTON: You mean 195, 196?

12 MR. MacLEAN: 195, 196.

13 MR. BOYDSTON: Yes.

14 MR. MacLEAN: And also ---

15 MR. BOYDSTON: And 224, as I said, 224
16 and 225. That is true. We are --- that should be
17 happening imminently. Very quickly, on March
18 30th, they already had that. We've given them the
19 hard copies already. It was the electronic
20 underlying stuff we did get them on the 30th at 6
21 a.m.

22 JUDGE STRICKLER: You said you had

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1 already delivered the hard copies previously?

2 MR. BOYDSTON: We delivered the hard
3 copies, yes, on the 27th.

4 JUDGE STRICKLER: Mr. MacLean, is that
5 true?

6 MR. MacLEAN: Your Honor ---

7 JUDGE STRICKLER: No, no. That was an
8 easy question. Is it --- and you asked the
9 witnesses. Did you receive the hard copies on
10 March 27th or not?

11 MR. MacLEAN: I apologize, Your Honor.
12 I might have heard incorrectly. The hard copies
13 of what?

14 MR. BOYDSTON: Of the reports, and all
15 of the information. What they did not get was the
16 electronic backup. Scout's honor, that's true, I
17 admit it.

18 JUDGE STRICKLER: So the hard copies
19 but the backup had to be electronic.

20 MR. BOYDSTON: Exactly.

21 JUDGE STRICKLER: They didn't get it
22 until one business day, March 27th, I just took a

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1 look, it was a Friday.

2 MR. BOYDSTON: That's right.

3 JUDGE STRICKLER: When did you deliver
4 it on Monday?

5 MR. BOYDSTON: At 6 a.m. Lester Madigan
6 emailed it and I got the email ---

7 JUDGE STRICKLER: 6 a.m. Pacific time.

8 MR. BOYDSTON: Yes, it would have been
9 9 a.m. your time, or ---

10 JUDGE STRICKLER: No, no, no.

11 MR. BOYDSTON: It was 6 a.m. Washington
12 time. I'm sorry.

13 JUDGE STRICKLER: So, it was late by a
14 day is what you're saying.

15 MR. MacLEAN: Your Honor, it was late
16 by a business day after a weekend in which we
17 were working on this, because we had just
18 received this and needed to use what time we had
19 to get ready for this hearing. We have a whole --
20 - there's a whole new methodology here.

21 Now, I don't agree that it was
22 received at 6 a.m. Actually, you'll see the email

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1 exchange, I believe, as part of the affidavit we
2 submitted as part of our motion. It was actually
3 that afternoon, because that morning I was
4 actually writing to Mr. Boydston for the third
5 time saying, Mr. Boydston, I still don't have the
6 backup data. This is really prejudicial to us
7 because we need every minute we have. And we
8 stayed every minute we have. Dr. Erdem and his
9 team KPMG are working on this right now in case I
10 have to do my best to respond. But I am saying,
11 I'm not in a position to respond adequately at
12 this time.

13 JUDGE STRICKLER: But all these
14 materials go to what Dr. Robinson has called the
15 synthesized Gray-Robinson.

16 MR. MacLEAN: She calls it the
17 Robinson-Gray methodology.

18 JUDGE STRICKLER: Robinson-Gray, and we
19 don't have any synthesized Robinson-Erdem
20 methodology at issue here, do we?

21 MR. MacLEAN: No. But she's also the
22 Robinson --- so called Robinson-Erdem, Judge, in

1 the devotional category.

2 JUDGE STRICKLER: That's why I asked my
3 question.

4 MR. MacLEAN: Okay.

5 JUDGE STRICKLER: Thank you.

6 JUDGE BARNETT: Mr. Boydston, do you
7 want to respond to Mr. MacLean's statement that
8 Dr. Robinson's rebuttal statement included a new
9 methodology with respect to the SDC?

10 MR. BOYDSTON: Thank you, Your Honor.
11 That was what I was going to mention. It is not a
12 new methodology. It is a slight variation, and
13 slight only in the way that she has explained on
14 Dr. Gray's methodology.

15 JUDGE BARNETT: But it is a different
16 methodology.

17 MR. BOYDSTON: I would say it's --- I
18 don't know --- maybe you should ask her, frankly.

19 JUDGE BARNETT: Okay.

20 MR. BOYDSTON: I mean, I --- my
21 understanding is it is a slight variation. I
22 don't know if that means it's a whole new

1 methodology. It's one factor that has changed, as
2 she was describing in response to Judge
3 Strickler's questions, the way she changed the---

4

5 JUDGE BARNETT: Well, since you already
6 said you don't know, let's just ask her.

7 MR. BOYDSTON: Certainly. Shall I?

8 JUDGE BARNETT: Yes.

9 BY MR. BOYDSTON:

10 Q Dr. Robinson, in your view is the
11 Robinson-Gray methodology a new methodology?

12 A What I understand Dr. Erdem to be
13 doing was to be ---

14 Q Dr. Erdem or Dr. Gray?

15 A Dr. Erdem.

16 Q Okay.

17 A We're talking about SDC here. Right?

18 Q We are. We're talking --- yes, that's
19 right. I beg your pardon. The Robinson-Gray
20 methodology as you called it affects --- although
21 it's involving Dr. Gray, MPAA's witness, it
22 affects the devotional category. Correct?

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1 A So, what Dr. Erdem did was he also
2 based his analysis on distant viewership, and he
3 also -- and by also, I mean as Dr. Gray did, he
4 has a different way of estimating distant
5 viewership than Dr. Gray did. But, ultimately,
6 his relative market value measures come from his
7 estimates of distant viewership. So, I had
8 various issues with the methodology that he
9 employed to estimate distant viewership, so I
10 sought to improve the estimates of distant
11 viewership in order to modify his results so that
12 using his approach of distant viewership as a
13 methodology for estimating relative market value
14 to come up with a more accurate estimate.

15 Q And to do that you borrowed some of
16 what Dr. Gray did?

17 A And to do that, I borrowed some of
18 what Dr. Gray did. The point also being that I
19 didn't have any of that viewership data until I
20 went through the rebuttal, because it was turned
21 over after my first set of reports. So, when I
22 had it --- when I did my rebuttal report, I had

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1 that data and was able to do that.

2 JUDGE STRICKLER: Am I right that Dr.
3 Gray and Dr. Erdem have different ways of
4 estimating viewership?

5 THE WITNESS: Yes.

6 JUDGE STRICKLER: And you tried to
7 improve upon Dr. Erdem's estimation of distant
8 viewing by applying Dr. Gray's different version
9 of estimating distant viewing to your analysis?

10 THE WITNESS: Correct.

11 JUDGE STRICKLER: Thank you.

12 JUDGE BARNETT: Final word, Mr.
13 MacLean.

14 MR. MacLEAN: I was going to ask if I
15 could voir dire on that.

16 JUDGE BARNETT: You may.

17 BY MR. MacLEAN:

18 Q Dr. Robinson, Dr. Gray's methodology
19 and the Robinson-Gray methodology both employ the
20 MPAA's distant viewing figures, HHVH figures for
21 2000 through 2003. Correct?

22 A I think the answer to that is yes. He

1 uses the 2000 to 2003 Nielsen data on distant
2 viewing, if that's what you're asking.

3 Q That MPAA produced. Correct?

4 A Yes.

5 Q Yes?

6 A Yes.

7 Q Based upon a sample selected by Marsha
8 Kessler. Is that right? If you don't know, then
9 just say that.

10 A Yes, it's the same issue, I guess, as
11 in the 2000 to 2003 data, which is the Kessler
12 sample, which is, as I understand it, or at least
13 to my knowledge has not still been well
14 characterized.

15 Q Dr. Erdem uses none of that data. Is
16 that correct?

17 A Yes, I believe he does not use that
18 data.

19 Q For the local viewing, Dr. Gray and
20 you both employed meter data from Nielsen markets
21 that use meter data. Correct?

22 A Correct.

1 Q Dr. Erdem doesn't use any of that
2 data. Right?

3 A He uses a different measure of local
4 ratings, yes.

5 Q Dr. Erdem uses report on devotional
6 programming from Nielsen. Correct?

7 A Correct.

8 Q Which is based on Nielsen sweep data
9 from all the DMAs. Correct?

10 MR. BOYDSTON: Your Honor, this seems
11 like cross-examination which he's certainly
12 allowed to do, but is this voir dire any more?

13 JUDGE BARNETT: It is. Go ahead.

14 THE WITNESS: Yes.

15 BY MR. MacLEAN:

16 Q Dr. Gray and the Robinson-Gray
17 methodology both estimate viewership on a
18 quarter-hour by quarter-hour basis. Is that
19 right?

20 A Yes.

21 Q Dr. Erdem does not use quarter-hours
22 in his estimates, does he?

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1 A That's correct.

2 Q In fact, the only data set that Dr.
3 Erdem uses in his methodology that you also used
4 in the Robinson-Gray methodology were the list of
5 SDC programs claimed in this proceeding. Right?

6 A I mean, that certainly was used by
7 both of us. As to whether or not there's any
8 other, you know, data set, I'd have to go back
9 and look because there's a lot of data sets, you
10 know. There's four things going on here. Right?
11 There's cable, there's satellite, there's SDC,
12 there's MPAA, but it --- that's probably correct.
13 It might take me a minute to be sure.

14 Q Aside from that list, aside from Dr.
15 Erdem's list of programs claimed by the SDC, you
16 did not incorporate any other data that Dr. Erdem
17 used to calculate his estimates, did you?

18 A What I did is I looked at all the data
19 available to me, and I came up with a best
20 possible estimate of distant viewership that I
21 could.

22 Q And all of that data was MPAA's data,

1 not Dr. Erdem's data. Correct?

2 A The main data source was the MPAA
3 data. But the devotional --- using the devotional
4 category.

5 Q Dr. Gray never calculated allocations
6 in the devotional category, did he?

7 A I'm not sure what Dr. Gray did or
8 didn't do, but ---

9 Q The ---

10 A Not that I see.

11 Q You have used, essentially, your
12 modifications to Dr. Gray's methodology to
13 calculate allocations to the devotional category.

14 A I'm an economist. I have a bunch of
15 data. I'm using the best most methodologically
16 sound way I have to compute distant viewing for -
17 -- in the devotional category.

18 Q Which in your view is Dr. Gray's
19 approach with your modifications and not Dr.
20 Erdem's approach. Correct?

21 A His approach is to say --- is to focus
22 in on the distant viewership. I have issues with

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1 the way he estimated distant viewership, so I
2 estimated distant viewership in the same way but
3 used the same method to estimate relative market
4 value from the distant viewing estimates.

5 Q Who is the "he" in that sentence?

6 A I think Erdem, Dr. Erdem.

7 Q Dr. Erdem --- what you're saying,
8 basically, is Dr. Erdem based evaluation, wrote
9 the evaluation on viewership, Dr. Gray does, too.
10 That's the similarity.

11 A I'm saying that Dr. Erdem did his ---
12 had a methodological approach requiring
13 estimates of distant viewing in order to estimate
14 relative market value. Since I had issues with
15 the way that he estimated distant viewing, I used
16 the data available to me to come up with better
17 estimates of distant viewing in order to apply
18 his approach to measure relative market value.

19 Q And, of course, this new approach, you
20 did not present until your rebuttal statement for
21 the first time.

22 A Well, I didn't have the data to do it

1 until then.

2 Q Until you submitted your rebuttal
3 statement?

4 A Correct.

5 Q When did you get MPAA's data?

6 A After I filed. Whatever the last
7 report was called, or the ---

8 Q You didn't seek to amend your written
9 direct statement, did you?

10 JUDGE BARNETT: You're going far
11 afield.

12 MR. MacLEAN: I made my objection on
13 the record.

14 JUDGE BARNETT: Thank you. Anything
15 more? Ms. Plovnick?

16 MS. PLOVNICK: We've already stated our
17 objections.

18 JUDGE BARNETT: Okay. We're going to
19 consult on this one.

20 (Whereupon, the above-entitled matter
21 went off the record at 1:48 p.m., and resumed at
22 2:06 p.m.)

1 JUDGE BARNETT: I can't help
2 but notice, it's apropos of nothing, that it's
3 after two o'clock on Thursday and we have one day
4 left. I'm hoping we're going to make it. Well,
5 not hoping. I'm saying we will make it.

6 MR. BOYDSTON: Yes, Your Honor.

7 JUDGE BARNETT: With regard to Dr.
8 Robinson's rebuttal, written rebuttal statement
9 and the exhibits and tables and so forth, what
10 are included therein or separated out as separate
11 exhibits, and we hope we are not being
12 inconsistent in this ruling, being as how there
13 are written objections pending.

14 Nonetheless, it's clear that it is
15 inappropriate to introduce a new methodology, or
16 attempt to introduce a methodology at the point
17 of rebuttal. Dr. Robinson in her rebuttal is
18 certainly permitted to criticize Dr. Erdem's
19 methodology and his conclusions. That's what
20 rebuttal's about.

21 But she is not permitted to go that
22 extra step and say here's how -- here's a

1 methodology by which we can fix everybody's
2 problems. That is a new methodology, and that
3 will not be permitted. So the portions of her
4 statement that have to do with direct criticism
5 of Dr. Erdem can be allowed in.

6 The portions of her statement that
7 have to do with variations on the theme of the
8 methodologies, in other words, take this part and
9 put it together with that part, and synthesize it
10 and come up with something that might be a
11 superior product, nonetheless it is a different
12 product.

13 The only purpose of rebuttal is to
14 respond to your opponent, not to create or
15 introduce new material. So that extent, Mr.
16 MacLean, your objection is sustained. The motion
17 is granted.

18 Now Ms. Plovnick, I'm not sure whether
19 that answers your question, or whether you still
20 have a pending motion on your papers, and you
21 would like to continue with it. You're both
22 still allowed to continue with the -- sorry.

1 (Pause.)

2 JUDGE BARNETT: Further, at the
3 prompting of my colleagues, when the witness, the
4 expert witness, whether it's Dr. Robinson or any
5 other attempts to fix a problem in an opponent's
6 expert's methodology, it doesn't really fix the
7 problem. What it does is it introduces or
8 creates new problems that require responses, and
9 that's why the new methodology or the synthesized
10 methodology cannot be a part of the record at
11 this point.

12 That's just -- I hope that makes it
13 more clear. Ms. Plovnick?

14 MS. PLOVNICK: With regard to our
15 objection, I think that our pending motion
16 remains pending, with regard to our objection for
17 failure to correct the conflicting program title
18 issue to the extent that the persists. So we
19 left on those papers and then I suppose you've
20 given us leave to file additional written
21 objections, to some provisionally admitted
22 exhibits.

1 So we would continue say that our
2 position is that's still pending, and then any
3 other exhibit that's offered, that we think that
4 has an issue, we would want to raise that
5 objection, a continuing objection on that basis.

6 JUDGE BARNETT: Thank you.

7 MR. BOYDSTON: Your Honor, I
8 understand the ruling. But if I can just have
9 just a brief moment to put something on the
10 record.

11 JUDGE BARNETT: You may.

12 MR. BOYDSTON: Last time, I think that
13 I meant I accept that. I want to point out just
14 a couple of things. One is that in this
15 proceeding, the SDC filed a motion to compel, to
16 force the MPAA to produce this very information
17 that the Robinson analysis is based upon, and
18 that it -- in that motion to compel, the SDC
19 themselves argued to the judges that they should
20 be permitted to look at anything in the record of
21 any party.

22 That was -- and that the position

1 they're taking now is inconsistent with that
2 motion to compel and their insistence at the time
3 that anything should be able to be brought in, in
4 terms of the methodological approach. I'm simply
5 saying that their insistence now to keep this out
6 is inconsistent with that position. With that,
7 may I --

8 JUDGE BARNETT: Your record is made.

9 MR. BOYDSTON: Thank you. May I
10 continue the examination?

11 JUDGE BARNETT: Yes, please.

12 BY MR. BOYDSTON:

13 Q Dr. Robinson, given that much of the
14 last testimony time was devoted to questions to
15 you about Dr. Erdem's analysis, why don't we talk
16 about that now. In other words, you are familiar
17 with Dr. Erdem's affirmative report and his
18 methodology; correct?

19 A Correct.

20 Q And is Dr. Erdem's analysis based upon
21 distant viewers or local viewers?

22 A Well, what -- a short answer to that

1 is local viewers. Essentially what he does is he
2 uses a month of data from February of 1999, to
3 look at the relationship between distant viewing
4 and local viewing. He asserts based on the
5 February 1999 data analysis that -- that local
6 viewing, local ratings are a good proxy for
7 distant ratings.

8 Q And do you have a view as to whether
9 or not that is a viable approach?

10 A Well, I think using one month of data
11 from February 1999, and to then rest your entire
12 analysis from 1999 to 2009 on that, is not
13 reliable. Further, I note that he only had local
14 viewing data for a subset of the programs.

15 Further, I note that he discusses in
16 the body of his report that he does -- that he
17 finds a roughly .9 correlation. So let's go to
18 February 1999, and assume for the moment that we
19 think using one month of data is a reasonable
20 thing to do.

21 He acknowledges or he tells us that
22 there's a .9 approximately correlation to

1 highlight his view that it's reasonable to use
2 one as a proxy for the other. However, what he
3 doesn't report in the body of the report, but
4 which is in the backup, is the specific results
5 of his regression.

6 He has a chart of regression, but he
7 doesn't give us the actual results. In the
8 actual results, if you look at the coefficient on
9 the local ratings, it's approximately .5. So to
10 the extent that that regression is meaningful in
11 and of itself and meaningful for the purpose of
12 predicting the future, the relationship itself
13 says that one local rating, that increasing local
14 ratings will increase distant ratings by a factor
15 of one-half.

16 JUDGE STRICKLER: But if I remember
17 Dr. Erdem's testimony in this case, I thought he
18 said he did not do a regression. He said he did
19 do a regression.

20 THE WITNESS: Yeah. Do you have his
21 report, the direct report?

22 JUDGE STRICKLER: Is that 644, SDC

1 644?

2 THE WITNESS: It seems to be 635.

3 JUDGE STRICKLER: An SDC document?

4 THE WITNESS: SDC 635.

5 JUDGE BARNETT: 635.

6 (Simultaneous speaking.)

7 JUDGE STRICKLER: I'm sorry.

8 JUDGE BARNETT: Is the cable, and 636
9 is the satellite.

10 JUDGE STRICKLER: Which one are you
11 going to look at, cable or satellite?

12 THE WITNESS: Oh. I'm looking at 635.

13 JUDGE STRICKLER: Thank you.

14 THE WITNESS: If you look at page 15,
15 the first full paragraph talks about Exhibit 5 in
16 this correlation coefficient of .9, and then he
17 talks about his regression analysis of local
18 ratings or distant ratings, saying it provides a
19 positive and statistically significant
20 coefficient, but he never tell us what that
21 coefficient is. It is approximately .5, which I
22 determined by rerunning his code.

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1 Now whether this chart, this line that
2 he drew here is actually his regression line or
3 not, I'm not sure. It doesn't really state in
4 the chart, but effectively, he's plotted the
5 points on which the regression is run, and shown
6 us what, you know, what the regression line
7 probably looks like.

8 I would point out that this regression
9 on very few observations. I recall, think that
10 there's 11 observations, which is not a lot to
11 run the regression, and thirdly that it's based
12 on some titles which are no longer in the case.
13 So in fact if he were to update this, he would
14 have even fewer observations.

15 But going back to the bigger point, he
16 doesn't tell us that his F positive coefficient
17 is .5. So he's using this data from February
18 1999 in order to justify the use of local ratings
19 in place of distant ratings, unlike Dr. Gray's
20 analysis, where he tries to develop a
21 relationship between distant viewing and local
22 ratings, as well as some other variable,

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1 controlling for other variables.

2 Dr. Erdem doesn't control for anything
3 else. He's got very few observations, and he's
4 using one month of data. So it's just not a
5 compelling analysis to me.

6 BY MR. BOYDSTON:

7 Q Focusing on the use of one month of
8 data, you recall that Dr. Erdem proposed a
9 methodology from the '98-'99 cable proceeding?

10 A Yes.

11 Q And there used, I think, the same
12 month's data to project for 1999; correct? It
13 was a different methodology though; correct?

14 A I do recall that it's different. I
15 don't really remember very well right now. I
16 think if you could refresh my memory --

17 Q Well, what I'm focusing on is just the
18 data that was used. Is it your recollection that
19 in the 1998-99 proceeding, Dr. Erdem, did he use
20 this same February '99 data?

21 A My recollection is yes.

22 Q Now they are just using it for one

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1 year.

2 MR. MACLEAN: Objection. So I'm going
3 to object on lack of foundation and
4 mischaracterizes the testimony, and I will along
5 those lines remind the judges that Dr. Erdem was
6 actually only a rebuttal witness for us in the
7 1999 cable royalty proceedings.

8 MR. BOYDSTON: Well, I think the
9 foundation was she participated in those and
10 remembers it.

11 JUDGE BARNETT: Sustained. She
12 remembered it after you told her what it was. So
13 would you ask a question that's not leading,
14 please Mr. Boydston?

15 BY MR. BOYDSTON:

16 Q Certainly. Do you believe that it's
17 appropriate to use one month of ratings from 1999
18 to project viewership ten years, all the way out
19 to 2009, or is that pushing things -- never mind.
20 I'll stop there. What do you think about that?

21 A I do not think that's reasonable.

22 Q It seem like a common sense sort of a

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1 thing, that using one month to project ten years
2 is too much, but is that more -- is your answer
3 more complicated than that?

4 A Well, as I was talking about a couple
5 of minutes ago, there's a couple of related
6 issues. So it's only one month of data. For
7 that month to be meaningful to talk about the
8 next ten years, it would have to be
9 representative of what goes on in the next ten
10 years.

11 I didn't see Dr. Erdem provide any
12 evidence as to why the nature of the relationship
13 between local ratings and distant ratings would
14 be exactly the same in those ten years as they
15 were one sweeps week month of February 1999. In
16 fact, I mean Dr. Erdem, as we talked about a few
17 minutes ago, you know, criticized some of my work
18 for using data from 2000 to 2003, to talk about
19 what was going to happen between 2004 and 2009.

20 So I think he is aware of the issue of
21 making those kinds of assumptions.

22 Q And we were talking about the February

1 1999 data. Are you familiar with the RODB
2 report?

3 A Yes.

4 Q Is that the same thing as this data
5 we've been talking about?

6 A Yes, that's the local ratings data
7 that he used.

8 Q And do you feel that the RODB report
9 is representative of the titles at issue in this
10 proceeding, including the IPG titles, or does it
11 include them sufficiently is what I meant?

12 A Well, it does not include all of the
13 titles, and further, it does not include all the
14 titles, and Dr. Erdem basically suggests that
15 that doesn't matter, because they're
16 representative of the missing titles. However,
17 if I recall, it's in satellite 2006, he has a
18 zero -- his result is zero percent share for IPG,
19 which is a direct result of the fact that he
20 doesn't have any IPG programs in 2006 in his
21 data.

22 Q Are you sure that that is the correct

1 year?

2 A I know. I could look at that, if I
3 can look at the --

4 Q It's the one year where he has zero
5 claims.

6 A Yes. I mean it's 2008.

7 Q Thank you. Is Dr. Erdem's treatment
8 of WGN appropriate in your view?

9 A I recall that Dr. Erdem just took out
10 the WGN titles, just said that they looked
11 different; therefore, he wasn't going to
12 incorporate them.

13 Q And do you think that was an
14 appropriate treatment?

15 A No. I mean the titles are there.
16 We're, you know, responsible to figure out what
17 to do with them.

18 Q Thank you. Let's resume our
19 discussion about your critique of Dr. Gray.
20 Again, I made that switch just because we've been
21 talking about Dr. Erdem as a result of the voir
22 dire by counsel.

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1 But moving back to Dr. Gray, you
2 testified about the fact that his analysis is
3 based upon Nielsen distant viewing data for the
4 sweeps months in 2000-2003, and you made a
5 criticism about that. Do you have a criticism
6 about the use of his local ratings data?

7 A Well, I mean first of all there's, you
8 know, the issue of you know whether -- the
9 relevance of local ratings to distant viewing. I
10 would agree, though, that for the purposes of
11 doing any regression analysis, where it's one of
12 many factors that go into trying to explain
13 variation in distant viewing, that it's not on
14 the face of it unreasonable to include it.

15 I'll note that he also doesn't have
16 local ratings data for all the titles, and so for
17 the missing titles, he simply estimates it based
18 on the titles that he has. So he's again
19 basically assuming that what he doesn't have data
20 for looks like what he does have data for.

21 Q We were discussing Dr. Gray's use of
22 his regression analysis, and you were discussing

1 the alternative method that you were looking at,
2 excuse me, and then we got off into the subject
3 of the Robinson-Gray methodology, which now is
4 not going to be addressed.

5 But I guess my question to you is
6 although not for the purposes of introducing a
7 new methodology, do you believe that Dr. Gray's
8 methodology is flawed, because it did not use the
9 method that you wanted to use that you described?

10 A May I ask a question?

11 JUDGE BARNETT: That's Mr. Boydston's
12 job. I'm sorry. Unless your question is could
13 you rephrase the question.

14 BY MR. BOYDSTON:

15 Q I'd be happy to try.

16 A I'm confused as to the concept of the
17 Robinson-Gray methodology, as applied to the
18 critique of Dr. Gray, versus the critique of Dr.
19 Erdem with respect to your question.

20 Q Well, the Judges have ruled, and
21 correct me if I'm wrong, that IPG could not
22 introduce a new methodology at this juncture.

1 However, we are entitled to critique other's
2 methodology. So I don't want you to introduce a
3 new methodology; what I'm asking you is whether
4 or not you have a critique as to Dr. Gray's
5 methodology, specifically with regard to the
6 manner in which he conducted his analysis, using
7 the dummy variable coefficients that you
8 described?

9 A So although I really don't understand
10 the ruling, I'll just leave it vague.

11 JUDGE BARNETT: Believe me, Dr.
12 Robinson, if you step into an area that counsel
13 thinks oversteps the ruling, they'll let you
14 know.

15 THE WITNESS: Yes. I think that Dr.
16 Gray's regression analysis can be improved. I
17 think that it is a, first of all, it is improper
18 to base his results on an arbitrary choice of the
19 dates 2000. Secondly, I think it is not proper
20 to include independent variables that he does not
21 have values for in his out of sample predictions.

22 Those are two of the things we've

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1 talked about so far, and there's more critiques
2 in my report, but --

3 BY MR. BOYDSTON:

4 Q Based upon your analysis of his work,
5 was it apparent to you whether or not Dr. Gray
6 used all of the data that he had, that was at his
7 disposal?

8 A I don't recall whether I addressed
9 that issue in my report specifically. If I
10 looked at it, I'm sure it would refresh my
11 recollection. One of the things I recall in this
12 vein is that there was some demographic data in
13 the RODB reports, and that was not used by Dr.
14 Gray or Dr. Erdem for that manner.

15 Q Now based upon your review of Dr.
16 Gray's methodology and his conclusions more
17 particularly, what was Dr. Gray's treatment of
18 claims that were made by -- competing claims by
19 the IPG and the MPAA for the same program?

20 A From his direct?

21 Q Yes.

22 A He assigned all of the conflicting or

1 dually claimed programs to MPAA and then to IPG.

2 Q And is that what he continued to do in
3 his subsequent reports?

4 A Yes.

5 Q As a general matter, as a statistician
6 or as a forensic expert, such as you're acting
7 here and Dr. Gray is acting here, is it
8 acceptable or is it proper to not consider
9 multiple possible outcomes in your analysis?

10 MS. PLOVNICK: I object, Your Honor.
11 I consider this an attack on the Judge's ruling,
12 which directed the claims, issues that -- the
13 title claims to go to MPAA, and now they're
14 asking if that was appropriate.

15 MR. BOYDSTON: It wasn't meant as
16 that. It was meant as just an attack on Dr.
17 Gray, frankly.

18 JUDGE BARNETT: Overruled. This is
19 just critique of Dr. Gray's methodology.

20 MR. BOYDSTON: Thank you, Your Honor.

21 JUDGE BARNETT: You may answer the
22 question.

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1 THE WITNESS: In the direct report, as
2 I understand it, that any information about how
3 those dually claimed titles were going to be
4 resolved, and so what I think is appropriate is
5 to consider all possibilities, or at least you
6 don't want to come up with 25,000 possibilities.

7 But you want to acknowledge that and
8 show the impact of both in some way, both
9 possible outcomes.

10 BY MR. BOYDSTON:

11 Q In a similar vein, isn't it proper for
12 an expert, when they come across information that
13 is perhaps detrimental to the side they've been
14 retained by, to go ahead and provide that
15 information anyway?

16 A Yes.

17 Q And Dr. Gray did not do that with
18 regard to the issue about the miscoding that you
19 performed, that resulted in certain claims being
20 overstated, did he?

21 A Correct. When I read his report and
22 I looked at that Table 3, I thought oh my

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1 goodness, I have to go look at my code, you know,
2 and I was trying to imagine how it could have
3 only impacted IPG's titles. Then when I went
4 back and looked, I saw that it impacted IPG's
5 titles as well as MPAA's titles.

6 Certainly I can tell you that it, you
7 know, if I were the one preparing that critique,
8 that I would have indicated that.

9 Q That is affected both, not just your
10 enemy?

11 A That is affected both and also, you
12 know, the outcome was not clear. In his
13 description, he talked about only the IPG titles.
14 So in the context of only the IPG titles, it
15 would help IPG. But in the context of the error,
16 and the fact that it could go up or down
17 depending on how many titles and the specifics,
18 you know, I think it was misleading.

19 Q And I withdraw the use of the word
20 "enemy." That's not what I meant. I meant
21 adversary.

22 JUDGE BARNETT: Enemy I think is --

1 (Laughter.)

2 BY MR. BOYDSTON:

3 Q Esteemed colleague. Do you agree with
4 Dr. Gray's -- whoops, excuse me. Yes. Do you
5 agree with Dr. Gray's methodology for determining
6 whether IPG programming has an effect on
7 subscribership?

8 A Again, this is a separate regression
9 analysis to the one that we were talking about
10 previously. The previous one was about
11 estimating distant viewership. This one is about
12 looking at subscribership. What Dr. Gray does is
13 he -- I mean we all acknowledge, or I
14 acknowledge, and I guess Dr. Gray acknowledges,
15 that subscribership is really important.

16 I wish I had more data on
17 subscribership in order to compute relative
18 market value. What Dr. Gray does in order to
19 basically support or justify his choice of using
20 distant viewership as the direct measure of
21 relative market value, is to try to do his
22 subscribership analysis where he suggests that

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1 essentially he's trying to say from that analysis
2 that viewers, that the relationship between --

3 That IPG viewers and MPAA viewers, you
4 know, aren't different in how they impact
5 subscribership, and that provides --if that were
6 true, it would provide support for his choice of
7 using a viewership measure.

8 But in his regression, so he runs a
9 regression, and one of the independent variables
10 in the regression is the compensable programming
11 mix of IPG and MPAA programs.

12 He says that because his regression
13 does not have a statistically significant
14 coefficient on that variable, that therefore IPG
15 and MPAA titles don't differently impact
16 subscribership.

17 So I have several issues with the
18 regression diagram, and so I ran some additional
19 regressions using the same data sources that he
20 did, and found that this result is sensitive to
21 the specifics, that the specification of the
22 regression and that there are reasonable

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1 specifications of the regressions that in fact do
2 show that there's a statistically significant and
3 positive relationship between the volume of IPG
4 programming, the compensable mix of IPG
5 programming.

6 I think it's an open question, and he
7 presents it as an open and shut issue.

8 Q Thank you. Could I ask you to take a
9 look at what's been marked as Exhibit 197, and is
10 this -- does this reflect part of the analysis
11 that you were just describing?

12 A No.

13 Q Okay.

14 A It's the wrong regression.

15 MR. BOYDSTON: Yes. Can you take a
16 look at what's been marked -- give me just a
17 moment -- as Exhibit 2, excuse me, 212?

18 (Whereupon, the above-referred to
19 document was marked as IPG Exhibit No. 212 for
20 identification.)

21 THE WITNESS: Yes.

22 JUDGE STRICKLER: It's the same as

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1 Table 3 in her rebuttal statement?

2 BY MR. BOYDSTON:

3 Q Yes, Your Honor.

4 A Yes. So this Table 3 on Exhibit 212

5 --

6 MS. PLOVNICK: Your Honor, we restate
7 our continuing objection, that this does not
8 capture the Judge's ruling on the claim disputes.
9 It has scenarios where IPG would get the disputed
10 titles. We restate our objection.

11 JUDGE BARNETT: So noted. Thank you,
12 Ms. Plovnick.

13 MR. MACLEAN: Your Honor, we have an
14 objection to this one, and this actually all goes
15 into our objection with the Robinson-Gray
16 methodology. Also these calculations, as we
17 understand it, include onboard programming the
18 devotional category.

19 THE WITNESS: This is from the direct
20 statement.

21 MR. BOYDSTON: This is from the
22 rebuttal, yes. I guess that was in. Yes, that

1 was from the rebuttal.

2 JUDGE BARNETT: Okay, thank you. Your
3 objections are noted and that will go to
4 consideration of the exhibits.

5 MR. BOYDSTON: Your Honor, noting
6 those pending objections, I'd like to move to
7 admit Exhibit 212.

8 JUDGE BARNETT: 212 is admitted
9 provisionally.

10 (Whereupon, the above-referred to
11 document was received into evidence as IPG
12 Exhibit No. 212.)

13 MR. BOYDSTON: Thank you, Your Honor.
14 Can you please take a look at what's been marked
15 as Exhibit 213? Actually Your Honor, before I
16 get further into that, when I moved to admit Dr.
17 Robinson's various statements, that's when the
18 objection came in.

19 But then you recessed on etcetera,
20 etcetera, etcetera. I don't think that the -- I
21 don't know that we got a ruling one way or the
22 other about Dr. Robinson's written direct

1 statement, her amended direct statement, her
2 supplemental direct statement or either of her
3 rebuttal statements. If you did, I missed it.
4 But I don't think there was a formal statement as
5 to --

6 (Whereupon, the above-referred to
7 document was marked as IPG Exhibit No. 213 for
8 identification.)

9 JUDGE BARNETT: There was not, and I'm
10 not sure they've been assigned numbers.

11 MR. BOYDSTON: I don't think we got
12 that far, no.

13 JUDGE BARNETT: Okay. At the end of
14 the day, have numbers assigned to them. We will
15 revisit that in the morning. But I think there
16 was no objection to direct, amended direct and
17 supplemental direct; is that correct counsel?

18 MR. MACLEAN: For the SDC, that was
19 correct.

20 MS. PLOVNICK: And that's correct for
21 MPAA.

22 JUDGE BARNETT: Okay, and then with

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1 respect to rebuttal and amended rebuttal --

2 MR. BOYDSTON: No. There were two
3 rebuttals, and there were objections to the
4 methodology.

5 JUDGE BARNETT: Two rebuttals.

6 MR. MACLEAN: Your Honor, with respect
7 to that, we stated our objections in our motion,
8 with respect to the particular tables that we
9 objected to, and if I understood correctly, you
10 granted our motion.

11 JUDGE BARNETT: So the extent, yes.
12 It involved a new methodology.

13 MR. MACLEAN: Yes, Your Honor. I
14 understood it to be you granted that portion of
15 our motion, directed to the so-called Robinson-
16 Gray methodology.

17 JUDGE BARNETT: Correct.

18 MS. PLOVNICK: We had objections in
19 writing, and I don't think you've ruled on our
20 objections in writing. So --

21 JUDGE BARNETT: No. The rebuttal
22 statements will -- the SDC one would be admitted,

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1 subject to the ruling, which would strike certain
2 portions of it, and the MPAA rebuttal would be
3 admitted provisionally, since you have a pending
4 objection regarding application.

5 MR. MACLEAN: Your Honor, our motion
6 actually set forth the tables in both, the
7 rebuttal to the SDC and the rebuttal to the MPAA.
8 I understood you to be granting a motion as to --
9 as to both rebuttal statements.

10 JUDGE BARNETT: To the extent the
11 issue is the same, yes. And so Ms. Plovnick, you
12 can consider that as well.

13 MS. PLOVNICK: All right. Thank you,
14 Your Honor. That's just what I was going to ask.

15 JUDGE BARNETT: You have numbers,
16 okay. We'll just put them on the record in the
17 morning.

18 BY MR. BOYDSTON:

19 Q Okay. Could you take a look at
20 Exhibit 213?

21 A Yes.

22 Q And what is that exhibit?

1 A This is regression results on the
2 viewership.

3 Q And what is it --

4 A Sorry, no, no, no. 213, right?

5 Q Yes. It's Exhibit 5A.

6 A Okay.

7 Q It was Exhibit 5A.

8 A Yeah. This is the subscribership
9 regression, excuse me.

10 Q Okay.

11 A It's various iterations of the
12 subscribership regression. You can see here --
13 to Gray Model 3 is the one that is simply -- Gray
14 Model 3 is the model that Gray uses, and he calls
15 Model 3.

16 And that first column then, Column 1,
17 is just from his amended report, his approach,
18 his results. And then what I did here is I
19 looked at what happens. If you assign the
20 remaining disputed claims to MPAA, which I gather
21 is like a ruling is. So that's Column 2.

22 MS. PLOVNICK: Your Honor, before she

1 reads it, we have our continuing objection to the
2 portions of the scenarios that would assign
3 conflicting claims to IPG. So we object to that
4 portion of the answer should she cover it.

5 MR. BOYDSTON: I'll go and move for it
6 now and then we can add the objection.

7 JUDGE BARNETT: Yeah, thank you.

8 MR. MACLEAN: Well, on that basis, I
9 abstain from making my objection, so it's
10 offered.

11 MR. BOYDSTON: It's offered.

12 (Simultaneous speaking.)

13 JUDGE BARNETT: It's offered, and you
14 just said you will.

15 MR. MACLEAN: Your Honor, this exhibit
16 is also subject to our motion, both with regard
17 to the Robinson-Gray methodology and to the
18 inclusion of Envoy Programming.

19 MS. PLOVNICK: Ours is a written
20 objection.

21 JUDGE BARNETT: Thank you.

22 MR. BOYDSTON: To try and --

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1 JUDGE BARNETT: 213's admitted
2 provisionally, subject to the pending objections
3 and the Court's or the Judges' ruling.

4 (Whereupon, the above-referred to
5 document was received into evidence as IGP
6 Exhibit No. 213.)

7 BY MR. BOYDSTON:

8 MR. BOYDSTON: Thank you. Please look
9 at Exhibit 214. Do you recognize -- are you
10 familiar with that?

11 (Whereupon, the above-referred to
12 document was marked as IGP Exhibit No. 214 for
13 identification.)

14 THE WITNESS: Yes.

15 BY MR. BOYDSTON:

16 Q And that is the -- what is that? That
17 is the satellite -- the satellite fellow traveler
18 to the previous exhibit?

19 A Yes.

20 JUDGE BARNETT: Mr. Boydston, you can
21 ask the question but you can't answer them, okay.
22 So what is that? That is -- that's both parts of

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1 the narrative or the colloquy.

2 MR. BOYDSTON: I was just trying to
3 speed things up.

4 JUDGE BARNETT: I appreciate it.

5 MR. BOYDSTON: Your Honor, I'd like to
6 move to admit Exhibit 214.

7 MS. PLOVNICK: Written objections,
8 Your Honor.

9 COURT REPORTER: I need you to keep
10 your voice up.

11 MS. PLOVNICK: Written objections,
12 Your Honor.

13 MR. MACLEAN: Again, this is subject
14 -- this exhibit is addressed in both with respect
15 to the Envoy issue and with respect to the
16 Robinson-Gray methodology. It's all part of our
17 motion.

18 JUDGE BARNETT: Okay, thank you. 214
19 is provisionally admitted, subject to all of the
20 pending matters.

21 (Whereupon, the above-referred to
22 document was received into evidence as IPG

1 Exhibit No. 214.)

2 BY MR. BOYDSTON:

3 Q These three exhibits, 212 to 213-214,
4 these are -- do these relate to the explanation
5 you'd be giving -- you were giving us before we
6 turned to them with regard to Dr. Gray's attack
7 on the IPG programming and its affect on
8 subscribers?

9 A Yes.

10 MR. BOYDSTON: Now please turn to --
11 I'd ask you to take a look at Exhibit 215, and do
12 you recognize 215?

13 (Whereupon, the above-referred to
14 document was marked as IPG Exhibit No. 215 for
15 identification.)

16 THE WITNESS: Yes.

17 BY MR. BOYDSTON:

18 Q And what does 215 relate to?

19 A 215, which is also called Table 4,
20 shows some of the results of my analysis of zero
21 viewing in the 2000-2003 Nielsen diary data used
22 by Dr. Gray.

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1 MR. BOYDSTON: And Exhibit 216, what
2 is that? Excuse me. Table -- 215, in other
3 words, 215, strike that. Your Honor, I'd like to
4 move to admit Exhibit 215.

5 MS. PLOVNICK: I believe we have
6 written objections. The numbers are all
7 different now, but I believe we still have
8 sections that would exclude certain dismissals.
9 We're objecting to these.

10 MR. MACLEAN: Your Honor, we submitted
11 in our motion of written objections because this
12 exhibit again includes Envoy Programming.

13 JUDGE BARNETT: Noted. 215 is
14 admitted.

15 (Whereupon, the above-referred to
16 document was received into evidence as IPG
17 Exhibit No. 215.)

18 BY MR. BOYDSTON:

19 Q And Dr. Ray at the bottom of this, the
20 conclusion -- at the bottom of this there's a
21 statement in the box that says number of court
22 hours, zero viewing percent and then some

1 numbers. It may seem obvious, but tell us what
2 that is and what they mean.

3 A Sorry. I'm not thinking about your
4 question, and I apologize. I'm thinking about
5 how everybody's characterizing my tables, and
6 whether or not they're characterizing them in a
7 way that I agree with. But if that doesn't
8 matter, I'll answer your question.

9 JUDGE BARNETT: What was the question,
10 Mr. Boydston.

11 BY MR. BOYDSTON:

12 Q At the bottom of this table, it seems
13 to be representing percentage numbers?

14 A Yes.

15 Q Coming from after the statement and
16 number of core hours and zero viewing percent.
17 What does this represent?

18 A Okay. What this -- in this chart, I
19 have various statistics, looking at the number of
20 quarter hours that have zero viewing in the data,
21 and in this chart, in the 2,000 -- I'm sorry,
22 215, it feels like 2,000, what we see is that --

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1 and if you look at the bottom panel, you see that
2 overall, we have, you know, 3.9 million quarter
3 hours and 76.2 percent of them almost three
4 million are zero viewing.

5 If you look up to the first panel --
6 so it tells you the number of quarters hours with
7 zero viewing, the number of broadcasts with zero
8 viewing, and the number of programs titles with
9 zero viewing for all broadcasts.

10 So for example, what we can see is
11 that 51 percent of all programs in cable have
12 zero viewing for all broadcasts of the title. So
13 51 percent are titles. That's zero viewing for
14 all broadcasts. If you look at the next table --

15 Q Yes, 216?

16 A Yeah. It looks at the program
17 supplier broadcasts in specific.

18 MR. BOYDSTON: Your Honor, I'd like to
19 move to admit Exhibit 216.

20 MS. PLOVNICK: Subject to the --

21 MR. MACLEAN: This is the last one?

22 JUDGE BARNETT: Yes.

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1 MS. PLOVNICK: Subject to the written
2 objection. We also have an additional objection
3 here, regarding the zero viewing. Maybe we can
4 do some voir dire actually, just to clarify,
5 because it's not clear to us the source of these
6 numbers.

7 JUDGE BARNETT: You could ask.

8 VOIR DIRE

9 BY MS. PLOVNICK:

10 Q Dr. Robinson, the zero viewing
11 statistics at the bottom of this chart here, did
12 you generate those figures yourself?

13 A Yes.

14 Q You did them -- they are your own
15 calculations?

16 A Yes.

17 JUDGE BARNETT: 215 is admitted,
18 subject to the objections.

19 MR. BOYDSTON: 216?

20 MR. BOYDSTON: 216.

21 (Whereupon, the above-referred to
22 document was received into evidence as IPG

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1 Exhibit No. 216.)

2 MR. BOYDSTON: Thank you, Your Honor,
3 and please take a look at Exhibit 217, and tell
4 us what that depicts?

5 (Whereupon, the above-referred to
6 document was marked as IPG Exhibit No. 217 for
7 identification.)

8 DIRECT EXAMINATION (resumed)

9 THE WITNESS: So this looks at in Dr.
10 Gray's analysis, if you look at the program
11 titles, it shows you -- for example, the number
12 of program titles that he used, and then it shows
13 you the percentage of program titles that had
14 zero viewing for all the broadcasts, and then the
15 other panels show more statistics about those
16 figures.

17 MR. BOYDSTON: Your Honor, I'd like to
18 move to admit Exhibit 217.

19 MS. PLOVNICK: We have written
20 objections to this.

21 MR. MACLEAN: The same objections.

22 JUDGE BARNETT: Admitted subject to

1 the objections.

2 (Whereupon, the above-referred to
3 document was received into evidence as IPG
4 Exhibit No. 217.)

5 MR. BOYDSTON: Please take a look at
6 Exhibit 218, and tell us what that is?

7 (Whereupon, the above-referred to
8 document was marked as IPG Exhibit No. 218 for
9 identification.)

10 THE WITNESS: Similarly, this looks at
11 the zero viewing for the program supply of
12 broadcasts in the 2000 to 2003 Nielsen diary data
13 used by MPAA. It breaks it down by MPAA and IPG
14 titles, and identifies for us the percentage of
15 those titles that have zero viewing for all
16 broadcasts.

17 JUDGE STRICKLER: A question for you,
18 Dr. Robinson, using 217 by way of example, Table
19 6.

20 THE WITNESS: 17 or 18?

21 JUDGE STRICKLER: 217.

22 THE WITNESS: Go back one?

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1 JUDGE STRICKLER: Yeah, or it's really
2 the same question for both, because it's the same
3 row that I'm asking you a question about, the row
4 that's called Number of Program Titles.

5 THE WITNESS: Uh-huh.

6 JUDGE STRICKLER: When you have it,
7 for example, for Cable, All Programs, 11,326,
8 that spans, as the title suggests, 2000 to 2003,
9 right?

10 THE WITNESS: Correct.

11 JUDGE STRICKLER: So if there's a
12 program in 2000 that was retransmitted, Seinfeld
13 on WPIX in 2000, and then Seinfeld in 2001, is
14 that two titles or is that one title, because it
15 was the same title, but in two different years?
16 Does my question make sense to you?

17 THE WITNESS: Give me a moment. I
18 think it does. I believe that it's in a year.

19 JUDGE STRICKLER: So Seinfeld in 2000
20 and Seinfeld in 2001 is a total of two program
21 titles?

22 THE WITNESS: Yes.

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1 JUDGE STRICKLER: Thank you.

2 MR. BOYDSTON: Your Honor, I'd like to
3 move to admit 218.

4 MS. PLOVNICK: With objections.

5 MR. MACLEAN: Same.

6 JUDGE BARNETT: 218's admitted subject
7 to --

8 COURT REPORTER: Excuse me, excuse me.
9 If the objections are going to come from back
10 there, I just need you to try to keep your voice
11 up.

12 MS. PLOVNICK: Written objections.

13 JUDGE BARNETT: Admitted, subject to
14 objections.

15 (Whereupon, the above-referred to
16 document was received into evidence as IPG
17 Exhibit No. 218.)

18 MR. BOYDSTON: Your Honor, I'd like to
19 now admit as a group 219, 220, 221, 222 and 223.
20 They also all deal with the same zero viewing
21 issue. So I'd move to admit those exhibits at
22 this time.

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1 (Whereupon, the above-referred to
2 documents were marked as IPG Exhibit Nos. 219,
3 220, 221, 222 and 223 for identification.)

4 MS. PLOVNICK: What numbers were they
5 again?

6 MR. BOYDSTON: 219 through 223.

7 MR. MACLEAN: Your Honor, the SDC has
8 no objection to 219, 220 and 223. As to 221 and
9 222, we have the same objection as to -- it
10 includes, improperly includes Envoy Programming
11 in the devotional category.

12 MS. PLOVNICK: Our written objections
13 apply to 221 and 222 as well, Your Honor.

14 JUDGE BARNETT: Thank you. 219
15 through 223, is that what you offered?

16 MR. BOYDSTON: Yes.

17 JUDGE BARNETT: Admitted, subject to
18 objections.

19 (Whereupon, the above-referred to
20 documents were received into evidence as IPG
21 Exhibit Nos. 219, 220, 221, 222 and 223.)

22 MR. BOYDSTON: Let me now have you

1 jump to 242, and the title of that is "Devotional
2 Titles With Zero Viewing For All Broadcasts."
3 The title may be self-descriptive, but could you
4 please tell us what this document is?

5 (Whereupon, the above-referred to
6 document was marked as IPG Exhibit No. 242 for
7 identification.)

8 THE WITNESS: Yes. So this identifies
9 by title the number of quarter hours and viewing
10 data with zero viewers in Gray's analysis.

11 JUDGE BARNETT: Your Honor, I'd like
12 to move to admit Exhibit 242.

13 MR. MACLEAN: Your Honor, now we
14 really are getting into matters that just go
15 directly to Dr. Robinson's use of the Robinson-
16 Gray methodology in the devotional category. I
17 don't see any other relevance to this exhibit.
18 So we would ask that it be rejected now.

19 MR. BOYDSTON: Your Honor, if I may,
20 this is only being offered, as the title
21 suggests, to show the incidence of zero viewing.
22 It was prepared using both of those, just because

1 at the time it was prepared, they were both in
2 the mix. So it's not being offered to, you know,
3 as part of a new methodology.

4 It's simply showing that based upon
5 this analysis, that's the instance of zero
6 viewing. So it's not offering a methodology.
7 It's simply commenting on the instances of zero
8 viewing --

9 (Simultaneous speaking.)

10 JUDGE BARNETT: From Dr. Gray's
11 analysis, is that right?

12 MR. BOYDSTON: Right. Well, they used
13 this diary data to establish a correlation of
14 distant to local, and this is showing that.

15 JUDGE BARNETT: Yeah. Can you answer
16 my question?

17 MR. BOYDSTON: Sorry.

18 JUDGE BARNETT: With the information
19 on Exhibit 7, which is -- for these proceedings
20 Exhibit 242, is this -- are these data from Dr.
21 Gray's analysis, or are they from some other
22 source?

1 BY MR. BOYDSTON:

2 Q It's from Dr. Gray's analysis, but the
3 witness should probably corroborate it rather
4 than me I suppose.

5 A Yes. So this is looking at Dr. Gray's
6 analysis, and the titles in the data that he
7 used, and which of those titles had zero viewing,
8 and how many broadcasts there were that had those
9 zero viewing. So this is a list where all the
10 broadcasts of that title were zero viewing, and
11 identifies how many broadcasts there were.

12 Q And this is also the information, the
13 data that was used by the devotional, by the SDC
14 and Dr. Erdem; correct, in order --

15 MR. MACLEAN: Objection, leading.

16 MR. BOYDSTON: I'm sorry --

17 JUDGE BARNETT: Sustained. Your
18 objection is overruled and Exhibit 242 is
19 admitted. This is not a new methodology. This
20 is a table of Dr. Gray's analysis.

21 (Whereupon, the above-referred to
22 document was received into evidence as IPG

1 Exhibit No. 242.)

2 MR. BOYDSTON: Thank you, Your Honor.

3 JUDGE BARNETT: isn't that what the
4 witness just said?

5 MR. MACLEAN: Well Your Honor, our
6 objection was it has not relevance in this
7 proceeding, because it's not based on the
8 witness' testimony. It doesn't sound like it's
9 based on anything that Dr. Erdem used or that IPG
10 used in the devotional category.

11 JUDGE BARNETT: Overruled. Go ahead,
12 Mr. Boydston.

13 MR. BOYDSTON: Thank you, Your Honor.
14 Dr. Gray -- I beg your pardon, Dr. Robinson, too
15 many doctors, please take a look at Exhibit 197.
16 Tell me what Exhibit 197 is doing? Oops, is
17 doing. That's not a good -- please explain to me
18 what 197 depicts?

19 (Whereupon, the above-referred to
20 document was marked as IPG Exhibit No. 197 for
21 identification.)

22 THE WITNESS: It is an exhibit

1 depicting summary statistics, and this is 1A, and
2 it's used for Gray's viewership regression
3 estimation sample and forecast period. This is
4 cable and WGN this particular --

5 BY MR. BOYDSTON:

6 Q Okay, and this is WGN, and then in the
7 following, the following two exhibits looked
8 similar, but dealing with different subject
9 matter; is that correct? Actually, the following
10 three.

11 A The 1B is essentially the same as 1A,
12 but it's Gray's non-WGN, and then 1C is satellite
13 WGN, refers to the cable, and then 1C is
14 satellite WGN and 1D is satellite non-WGN.

15 Q And you prepared these; correct?

16 A Yes.

17 MR. BOYDSTON: And these are Exhibits
18 197 through 200; correct?

19 (Whereupon, the above-referred to
20 documents were marked as IPG Exhibit Nos. 198,
21 199 and 200 for identification.)

22 THE WITNESS: Yes.

1 MR. BOYDSTON: Your Honor, I'd like to
2 move to admit Exhibits 197 through 200.

3 MS. PLOVNICK: Your Honor, we'd
4 restate our continuing objection to the columns
5 that include the dismissals.

6 JUDGE BARNETT: Noted. Mr. MacLean.

7 MR. MACLEAN: It's the same objection
8 as we've been -- as we've been raising, Your
9 Honor. Just to put it into context, if I'm
10 understanding correctly, I think each of these
11 exhibits is just a, you know, standing alone it
12 doesn't show allocations.

13 But it's just -- each of these
14 exhibits is a step in the analysis, up to --
15 leading up to the Robinson-Gray methodology.
16 That's why we're objecting to it, and also
17 because they all include Envoy Programming in the
18 devotional category.

19 JUDGE BARNETT: Overruled.

20 (Whereupon, the above-referred to
21 documents were received into evidence as IPG
22 Exhibit Nos. 197, 198, 199 and 200.)

1 BY MR. BOYDSTON:

2 Q Is that the case, Dr. Robinson, or
3 actually could you tell us the significance of
4 these exhibits? What are they doing?

5 A These exhibits are using -- this is
6 nothing. I mean this is not any set of data that
7 I chose. This is Gray's data from Gray's sample,
8 from his direct testimony, and my examination of
9 the data that he used, and summary statistics
10 that I put together from the samples that he
11 used.

12 Q And what is the purpose of presenting
13 these documents?

14 A What it does is it shows you the end
15 results of his estimates sample, and then it
16 shows you the out of sample forecast for -- it
17 shows you -- yeah. So the first one is the out
18 of sample forecast.

19 That means the 2004 to 2009, what his
20 actual forecast was for each of these things, and
21 so that would be -- the middle panel would be the
22 one coming directly from his direct, and then the

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1 last one, the one that he attempted to include
2 the dismissals.

3 JUDGE STRICKLER: And as in an expert
4 in this case, what conclusions are you asking us
5 to draw from this document, if any? This
6 document being 197. Well, just take us through
7 all of them.

8 THE WITNESS: Yeah. If I could look
9 at my report for a moment, that will probably
10 save us some time.

11 JUDGE STRICKLER: Okay.

12 MR. BOYDSTON: Your Honor, I note that
13 it's five minutes past three, and Dr. Robinson's
14 going to look at the report for a bit anyway. Is
15 now a good time for our afternoon break?

16 JUDGE BARNETT: Synchronicity. We'll
17 take a 15 minute recess.

18 (Whereupon, the above-entitled matter
19 went off the record at 3:04 p.m. and resumed at
20 3:27 p.m.)

21 JUDGE BARNETT: Please be seated. Mr.
22 Boydston?

1 MR. BOYDSTON: Thank you, Your Honor.
2 Your Honor, just a clarification. I believe that
3 Exhibits 197 through 200 were admitted, but there
4 was a question from the court reporter. My notes
5 show that they were, I believe they were, but a
6 clarification.

7 JUDGE BARNETT: Ms. Whittle?

8 MS. WHITTLE: I didn't hear you say
9 admitted.

10 MR. WOJACK: I didn't hear it either,
11 because I didn't mark it down.

12 MR. BOYDSTON: And again, this is 197
13 through 200, the immediate previous four
14 exhibits.

15 MS. PLOVNICK: We had our same
16 standing objections to the columns here, so I'll
17 say the written objection again in case --

18 MS. BARNETT: Thank you.

19 MR. MACLEAN: Also the SDC. Your
20 Honor, I just want to very quickly raise your
21 discussing, or at least we at MPA, to discuss the
22 order to vacate.

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1 JUDGE FEDER: Speak up a little.

2 MR. MACLEAN: Yes, Your Honor, thank
3 you. We're getting pretty nervous about whether
4 or not we are--where we are in the proceedings.
5 Not whether or not we're going to finish, because
6 I know you said we would finish on time. I do
7 believe the only way we're going to finish on
8 time is if we rigorously abide by the judges'
9 stipulated scheduling order requiring direct
10 testimony to be limited to introduction of
11 written direct statements and a brief opportunity
12 to respond to written rebuttal statements and/or
13 testimony of other witnesses. I simply raise
14 that to the judges' attention, and propose a
15 request that we do enforce that stipulated
16 requirement rigorously.

17 JUDGE BARNETT: It is your
18 stipulation; I expect that we will self-police.
19 If you feel that we are going outside the bounds
20 of your stipulation, bring it to my attention and
21 we will address it. But absolutely, we are--we
22 have an hour left today, we have five and a half

1 hours tomorrow, and if you want to make closing
2 arguments, they have to be tomorrow; maybe you'd
3 like to waive those to use the time, but I'm not
4 suggesting that as an alternative. I'm simply
5 saying I agree.

6 MR. MACLEAN: Can I make one--

7 JUDGE BARNETT: As long as--yes, Mr.
8 MacLean.

9 MR. BOYDSTON: One suggestion. We
10 know the written objection are there; can we
11 dispense with calling the attention to them? Can
12 we have a joint stipulation that your written
13 objections are out there? It saves a little bit
14 of time.

15 JUDGE STRICKLER: Maybe if counsel
16 doesn't have any problem, then we can say that we
17 assume that every document that he seeks to move
18 into evidence is subject to your written
19 objection, unless you say otherwise or unless
20 they don't address it. But I don't think we need
21 to keep interrupting with that, unless you
22 insist.

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1 JUDGE BARNETT: Well we opened the
2 hearing by saying the objections were there and
3 that anything we did would be subject to those
4 written objections being fleshed out in writing
5 with written responses and replies.

6 MS. PLOVNICK: MPAA would be agreeable
7 to just having it understood that our written
8 objections apply to everything that Mr.
9 Boydston's is offering, so that's fine with us.

10 MR. MACLEAN: I would agree also,
11 subject to there being--we would absolutely need
12 clarity as to whether of Dr. Robinson's
13 conclusions fit in the devotional category with
14 regard to the Robinson-Gray methodology. I think
15 your order was clear; if it's offered, however,
16 I'm certainly going to have to object to it.

17 JUDGE BARNETT: Okay. All right.
18 Thank you. Mr. Boydston?

19 MR. BOYDSTON: Thank you.

20 BY MR. BOYDSTON:

21 Q Dr. Robinson, before we broke, I was
22 asking your about Exhibits 201 and 202, and you

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1 were going to look at your statement, and have
2 you had a chance to do that? There were four,
3 and they were--

4 JUDGE BARNETT: I'm sorry, 197 through
5 200 were offered; subject to objections, they are
6 admitted.

7 MR. BOYDSTON: Thank you, Your Honor.

8 (Whereupon, IPG Exhibits 197 through
9 200 were admitted into evidence.)

10 JUDGE BARNETT: And now we're moving
11 on to?

12 MR. BOYDSTON: 201 and 202.

13 JUDGE BARNETT: 201 and 202.

14 DR. ROBINSON: These are my
15 replications of Dr. Gray's progressions and
16 modifications and analysis thereof.

17 BY MR. BOYDSTON:

18 Q And what is their significance?

19 A It shows the importance of the
20 specifications of Dr. Gray's models and his
21 results.

22 MR. BOYDSTON: Your Honor, I'd like to

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1 move that Exhibits 201 and 202 be admitted.

2 JUDGE BARNETT: Subject to the pending
3 objections, 201 and 202 are admitted.

4 (Whereupon, IPG Exhibits 201 and 202
5 were admitted into evidence.)

6 JUDGE BARNETT: I have a question, Dr.
7 Robinson. In this, for example, 201, there are
8 column headings, replication of Gray model three,
9 replication of Gray model three non-WGUN, and
10 then modified Gray model three, what does that
11 mean?

12 DR. ROBINSON: Those described--it
13 described both in the words underneath it, as
14 well as by looking down the column, so for
15 example here in column three, the modification is
16 substituting the log of total royalties paid in
17 the year for the year that is--

18 JUDGE BARNETT: Okay, so those are the
19 modifications that are included in the column?

20 DR. ROBINSON: Yes.

21 JUDGE BARNETT: Okay, thank you.

22 DR. ROBINSON: You were asking a

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1 question yesterday or this morning--this has been
2 a long day--and I'm not sure that I answered it
3 correctly, so I was wondering if I could--

4 JUDGE BARNETT: If you remind me of
5 the question, I'll be glad to have you answer it
6 again.

7 DR. ROBINSON: It was a question
8 about, that we were talking about Kenny v.
9 Spenny, and the Canadian broadcast, and we were
10 talking about something, and you asked a
11 question, I answered it sort of quickly, and then
12 I wasn't sure that you had asked the question
13 that I answered. So anyway, related to that
14 question, the answer--the point that I think you
15 were asking me is that we handled the Kenny v.
16 Spenny type broadcasting the same way. As I
17 understood it, the program was owned by --- maybe
18 owned and broadcast in Canada and then
19 retransmitted to the U.S., then it was non-
20 compensable, and we go through that in the same
21 way.

22 JUDGE FEDER: That was my question.

1 DR. ROBINSON: Oh, that was your
2 question? I'm sorry.

3 JUDGE BARNETT: That was Judge Feder's
4 question, but thank you.

5 BY MR. BOYDSTON:

6 Q Dr. Robinson, can you look at Exhibits
7 204 and 205, and when I mention two of these in
8 tandem, it's usually because one is cable and one
9 is satellite, same subject matter. So to move
10 things along, it seems to make a little bit of
11 sense. And what do 204 and 205 depict?

12 A What 204 and 205 depict are the IPG's
13 cable viewership share, with its Gray's model of
14 relative value, using his model and the green bar
15 is the one that puts all the remaining joint
16 clients through MPAA, and the red bar is his
17 original one.

18 Q Okay, and the purple bar is all the
19 rating claims to IPG, which obviously has been
20 ruled on?

21 A Right.

22 Q And so, but the first two bars

1 represent Gray's classification, and then his
2 classification, putting all the titles to MPAA?

3 A Correct.

4 Q And the same thing for the following
5 exhibit I gather, only it's for satellite?

6 A Yes.

7 MR. BOYDSTON: Your Honor, I'd like to
8 move to admit both of these exhibits, with the
9 proviso that the judges' order of course exists;
10 therefore this is only being offered as to the
11 relevance of the first two bars, not the third.

12 MR. MACLEAN: Your Honor, same
13 objections, subject to actual research; however,
14 this is not in response to any oral testimony or
15 written rebuttal testimony that's been submitted.
16 This falls within the category--I've been through
17 this whole line of questioning--he's simply
18 putting in testimony that should have been in her
19 written statement, and may very well be in her
20 written statement, and it's just not necessary
21 through all this oral testimony, exhibit by
22 exhibit like this.

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1 MR. BOYDSTON: Okay, it is in her
2 written testimony.

3 JUDGE BARNETT: Okay. 204 is
4 admitted. If it's part of her written rebuttal,
5 then it's admitted already.

6 MR. BOYDSTON: And 203.

7 JUDGE BARNETT: And 203.

8 MR. MACLEAN: You mean 205.

9 MR. BOYDSTON: I'm sorry. I
10 apologize. Yes, 204 and 205 is what I meant to
11 admit. So those are admitted, Your Honor?

12 JUDGE BARNETT: They are.

13 MR. BOYDSTON: Thank you.

14 MR. MACLEAN: Subject to--

15 JUDGE BARNETT: Yes.

16 MR. MACLEAN: Subject to the objection
17 that you aren't going to keep--

18 MR. BOYDSTON: Your Honor, I will
19 summarily then move to admit exhibits 206 through
20 211, with the same explanation where they
21 reference all claims going to IPG; the court has
22 ruled on that and it's being offered recognizing

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1 the court's ruling.

2 JUDGE BARNETT: Are these all included
3 in the written rebuttal statement?

4 MR. BOYDSTON: Yes they are, Your
5 Honor.

6 JUDGE BARNETT: Then there's no need
7 to admit them separately because the written
8 rebuttal statement is admitted.

9 MR. BOYDSTON: Well, I would love if
10 that were the case, but the way it actually came
11 in was the written rebuttal statement made
12 reference to these exhibits, and these exhibits
13 were submitted at the same time. If that's what
14 it means, great, I just didn't perceive that.

15 JUDGE BARNETT: Counsel, any objection
16 to including the exhibits to the written rebuttal
17 statement in the admission of the statement
18 itself?

19 MS. PLOVNICK: Subject just to our
20 standing objections.

21 JUDGE BARNETT: Okay.

22 MR. MACLEAN: So long as it does not

1 include the results of the Robinson-Gray
2 methodology of emotional capital.

3 JUDGE BARNETT: Which we've already
4 said. Okay.

5 MR. BOYDSTON: Okay, could I just
6 clarify the ones that have it, then we could get
7 that that would include, just for the record?

8 JUDGE BARNETT: Yes.

9 MR. BOYDSTON: Okay, that would be
10 Exhibits 206 through 211 and Exhibits 226
11 through--excuse me, 224 through 242.

12 JUDGE BARNETT: 226A has already been
13 admitted.

14 MR. BOYDSTON: And actually so has
15 242, I beg your pardon, Your Honor. Can I try it
16 again?

17 JUDGE BARNETT: No, that's fine, you
18 got it.

19 MR. BOYDSTON: Okay, thank you.

20 MR. MACLEAN: Your Honor, 224 and 225
21 are Dr. Robinson's conclusions based on the
22 Robinson-Gray methodology of emotional capital.

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1 MR. BOYDSTON: Your Honor, that is
2 correct. I'll withdraw the request on those two.

3 JUDGE STRICKLER: Which two are those?

4 MR. BOYDSTON: 224 and 225.

5 JUDGE BARNETT: 224 and 225 are
6 withdrawn.

7 MR. BOYDSTON: Dr. Robinson--

8 MR. WOJACK: Can you confirm for me
9 what was just received?

10 JUDGE BARNETT: We can. 206 through
11 211; 224--excuse me, 227--

12 JUDGE FEDER: 6.

13 JUDGE BARNETT: Well, 6 is already
14 admitted.

15 MR. BOYDSTON: And 7 is not, there is
16 nothing offered as 7.

17 JUDGE BARNETT: Okay, 229 through 242,
18 which has already been admitted. So really it's
19 229 through 238.

20 MR. BOYDSTON: Also 226.

21 JUDGE BARNETT: It's already admitted.

22 MR. BOYDSTON: Oh, I'm sorry, Your

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1 Honor. I beg your pardon.

2 (Whereupon, IPG Exhibits 206 through
3 211 and 229 through 238 were admitted into
4 evidence.)

5 BY MR. BOYDSTON:

6 Q Dr. Robinson, I would like to direct
7 your attention to the exhibits which sum up your
8 conclusions, and those will be found in the loose
9 set of exhibits, starting at Exhibit 253, and
10 these are the ones that were handed out this
11 morning. Your Honor, may I approach?

12 JUDGE BARNETT: You may.

13 MR. BOYDSTON: These have not yet been
14 tabbed, but they do have exhibit numbers up in
15 the upper right hand corner, and if you turn
16 about seven pages in or so, you'll see Exhibit
17 260, and the companion exhibit is 261. Do you
18 see those?

19 DR. ROBINSON: Yes, I do.

20 BY MR. BOYDSTON:

21 Q And are those your conclusions as to
22 the relative market value of IPG's share in the

1 cable category, or in cable for the premium
2 category and devotional category?

3 A Yes, these are the conclusions based
4 on my updated direct methodology.

5 Q And 261 appears to be a specific
6 reproduction of column E in 260; is that correct?

7 A Correct, and it has an additional
8 column within the point.

9 Q And on Exhibit 261 at the bottom, it
10 says "revisions," and there's several details
11 there; are you familiar with those details?

12 A Yes.

13 Q And does this faithfully include those
14 revisions?

15 A Yes.

16 Q Please take a look at what's been
17 marked at the top in the upper right hand corner
18 as 277, which is about 20 pages from the back.

19 MR. MACLEAN: Your Honor, I apologize.
20 You know, we've gone through so many different
21 sort of variations of these exhibits, I'm having
22 a little trouble keeping up and I can't--so I

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1 need to make an alibi objection here. I believe,
2 and I might be mistaken, but I believe that you
3 received provisionally Exhibits 237 and 238;
4 those also contain --- they seem almost
5 duplicative --- of the other ones that we
6 objected to, the Robinson-Gray methodology, both
7 in the devotional category. We ask that those be
8 excluded.

9 JUDGE BARNETT: 37 and 38?

10 MR. MACLEAN: 237 and 238, yes, Your
11 Honor.

12 JUDGE BARNETT: Thank you, Mr.
13 MacLean.

14 MR. BOYDSTON: Your Honor, it does
15 have one column saying remaining claims to the
16 MPAA, again, consistent with the order, that's
17 not reality anymore, but the one to the right
18 saying remaining -- excuse me, the one to the
19 right saying remaining claims to IPG has been
20 ruled on by you, was the column to the left,
21 still isn't a correct summation.

22 MR. MACLEAN: Well Your Honor, my --

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1 MR. BOYDSTON: Well let me just
2 finish. It's still a correct summation, I
3 believe it is relevant because that references
4 the remaining claims to the MPAA, and that the
5 impact is relatively small anyway because ---
6 it's relatively small on the devotional category
7 because moving the claims from disputed to the
8 MPAA in this category doesn't have much impact of
9 course on devotions.

10 MR. MACLEAN: Your Honor, that has
11 nothing to do with the objection I just raised.
12 The objection is in the results in the devotional
13 category of the Robinson-Gray methodology is like
14 --- the figures here are essentially identical to
15 --- well, I mean--this is even an un-updated
16 chart --

17 MR. BOYDSTON: Your Honor, I withdraw
18 the exhibits. You're actually pulling --- why
19 don't we sum it up and ask the witness?

20 JUDGE BARNETT: Well, you're the one
21 who's offering the exhibits. Which ones are you
22 offering, Mr. Boydston?

1 MR. BOYDSTON: Well, the ones I was
2 offering now are--we're moving back in time,
3 which is fine. This is Exhibit 238 and 239--237
4 and 238. So if I may, they had been admitted,
5 though I understand we're now entertaining a
6 rolling objection, which is fine. May I
7 approach?

8 JUDGE BARNETT: You may.

9 BY MR. BOYDSTON:

10 Q Dr. Robinson, look at 237. Does this
11 reflect a computation pursuant to the Robinson-
12 Gray methodology or not?

13 A Yes.

14 Q It does? And does 238?

15 A Yes.

16 MR. BOYDSTON: Okay. Your Honor, we
17 withdraw Exhibits 238 and 239.

18 JUDGE BARNETT: 237 and 238.

19 MR. MACLEAN: Thank you, Your Honor.

20 JUDGE STRICKLER: We had--there was a
21 withdrawing of 223 and 224 pursuant to your
22 objection, Mr. MacLean, and maybe your objection

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1 was that those documents also were reliant upon
2 the Robinson-Gray methodology?

3 MR. BOYDSTON: By the way, Your Honor,
4 not 233, that was different.

5 JUDGE STRICKLER: I didn't say 233.
6 I've gone back---you went back in time? I'm
7 playing the same game. 223 and 224, they were
8 withdrawn.

9 MR. BOYDSTON: Not--Your Honor, 224
10 and 225 were withdrawn.

11 JUDGE STRICKLER: I'm sorry, I meant
12 224 and 225, my apologies. 224 and 225, was your
13 objection based on the fact that they were
14 reliant upon or incorporated the Robinson-Gray
15 methodology?

16 MR. MACLEAN: Yes, Your Honor. 224,
17 225, I just did--and I'm very sorry, Your Honor,
18 I really--I meant to make these objections
19 contemporaneously, a bunch of stuff came in and I
20 just didn't keep up fast enough. 224, 225 are
21 both results of the Robinson-Gray methodology.
22 237 and 238 are actually the non-updated results

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1 of the same Robinson-Gray methodology in the
2 devotional category, and I now also have to add
3 235 and 236--

4 JUDGE STRICKLER: Wait for the
5 expert's--hang on a second. Dr. Robinson, is
6 that also--is that in fact the case, 224 and 225
7 are results based on the--what we've been calling
8 the Robinson-Gray methodology?

9 DR. ROBINSON: I'm almost certain that
10 the answer to that is yes, but if you'll give me
11 one moment.

12 MR. BOYDSTON: Your Honor, I didn't
13 log 224 and 225.

14 JUDGE BARNETT: You did.

15 MR. BOYDSTON: All right, but with
16 that understanding?

17 MR. MACLEAN: Yes. As long she's
18 looking--

19 DR. ROBINSON: Yes, it is. It is
20 based upon--

21 MR. MACLEAN: And then also, Your
22 Honor, 235 and 236 are simply graphical

1 representations of those same results. And so I
2 would also ask contemporaneously that they be
3 excluded.

4 MR. BOYDSTON: Well can we ask the
5 witness if that's the case?

6 JUDGE BARNETT: Yes.

7 BY MR. BOYDSTON:

8 Q Dr. Robinson, can you look at 235 and
9 236; are these computations based upon the
10 Robinson-Gray methodology or not?

11 A I believe that is a yes. Yes. Yes,
12 what was it, 235 and 236 are based on the
13 Robinson-Gray.

14 MR. BOYDSTON: We withdraw 235 and
15 236.

16 JUDGE BARNETT: Okay.

17 MR. MACLEAN: Thank you, Your Honor.

18 JUDGE BARNETT: Thank you.

19 BY MR. BOYDSTON:

20 Q Dr. Robinson, we had been discussing
21 exhibits 260 and 261, and then I directed you to
22 exhibits 276 and 277.

1 JUDGE FEDER: These are all the ones
2 that we've been withdrawing, right?

3 MR. BOYDSTON: Yes, this is the prime.

4 BY MR. BOYDSTON:

5 Q And are these your conclusions of the
6 IPG relevant market value in satellite?

7 MR. MACLEAN: Which exhibits?

8 MR. BOYDSTON: Sorry?

9 MR. MACLEAN: Which exhibit numbers?

10 MR. BOYDSTON: Oh, 276 and 277.

11 DR. ROBINSON: Yes, and I would point
12 out that again, the Table 9 of 277 mirroring the
13 261 Table 9 for cable shows the updates that were
14 made and those updates include all of the jointly
15 claimed IPG MPAA programs going to MPAA, it
16 includes--it takes out all of the ongoing
17 production that had previously been the Christmas
18 one title that had previously been in has been
19 taken out, and the other things that are
20 described here.

21 MR. BOYDSTON: Thank you, Your Honor.
22 I have nothing further. I'm sorry, one moment,

1 Your Honor.

2 DR. ROBINSON: So there's no Envoy
3 left in these charts, there is no Envoy
4 productions in the devotional category.

5 MR. BOYDSTON: If I could just have a
6 moment on a housekeeping issue. There were some
7 copies of Exhibits 267 and 268 where the charts
8 were all blown out of proportion on the page, and
9 we have corrected copies for those who need them.
10 I believe one of the parties needed them, is that
11 right? Did the MPAA need better copies of those?
12 Again, it was 267 and 268.

13 MS. PLOVNICK: The ones we printed out
14 at our office are okay.

15 MR. MACLEAN: Is this one of the--

16 MR. BOYDSTON: That's what I meant,
17 yes. And that's 267 on the top, and then
18 underneath it is 268.

19 MR. MACLEAN: Ours too.

20 MR. BOYDSTON: Yours are--do you need
21 copies?

22 (Off-microphone comment.)

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1 MR. BOYDSTON: I believe so, yes.
2 Your Honor, there are 267, and then underneath is
3 268.

4 JUDGE BARNETT: Thank you very much.
5 Mr. Olaniran.

6 CROSS EXAMINATION

7 BY MR. OLANIRAN:

8 Q Good afternoon Dr. Robinson. My name
9 is Greg Olaniran, I'm counsel for the Motion
10 Picture Association of America.

11 A Good afternoon.

12 Q I just have a couple of questions for
13 you. Dr. Robinson, have you ever been involved
14 in a transaction of pursuing an acquisition of
15 programming by a cable system?

16 A Have I ever been involved in the
17 acquisition of a program by a cable system?

18 Q Right, program or programs.

19 A No.

20 Q All right, and have you ever been
21 involved during negotiations concerning
22 acquisition of programming by a satellite

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1 carrier.

2 A No.

3 Q And you've never worked in connection
4 with acquisition of programming by a broadcast
5 station either, have you?

6 A I mean, I haven't been part of the
7 transaction, I have for example, as I mentioned I
8 believe yesterday or this morning, I did an
9 economic analysis of the negotiations between Fox
10 and the copyright holder to American Idol. But I
11 wasn't involved in the transaction, that was a
12 dispute.

13 Q What was the nature of the dispute?

14 A The nature of the dispute?

15 Q Yes.

16 A Was an appraisal rights case. The
17 company was sold, and there was an issue as to
18 the value of the company and the price at which
19 it was sold, and one of their major assets was
20 American Idol.

21 Q And did you work specifically on the
22 value of American Idol?

1 A I worked on a variety of aspects, but
2 one particular analysis I did, which I think
3 relates to your question, is looking at several
4 months' worth of confidential negotiations
5 between Fox and American Idol. I did an analysis
6 of those negotiations and of the factors that
7 went into the expected outcome of those
8 negotiations.

9 Q And did you in that project do
10 anything in connection with viewing?

11 A Yes.

12 Q And what specifically did you do with
13 regard to viewing?

14 A Well, much of that work was
15 confidential and under seal, so I don't know
16 exactly what I can say, but viewership is one of
17 the things that I looked at in doing the
18 valuation.

19 Q Sure. And you said--well you
20 testified in the 2000, 2003 Phase II proceedings,
21 I think this was in 2013 I think. I think that's
22 right. Did you mention that you worked on

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1 America's Got Talent, is that right?

2 A If I did, I meant to say American
3 Idol.

4 Q Oh, so the American Idol project was
5 probably a couple years ago, correct?

6 A Yes.

7 Q Okay, and since your 2013 testimony,
8 have you worked on any other projects in
9 connection with valuation of television shows?

10 A Well, yes, I'm not exactly sure what
11 the date you're talking about is, but I did an
12 analysis of Sharp Entertainment.

13 Q I said since your 2013 testimony in
14 the 0003 proceeding whether you've done any
15 additional work in connection with television
16 shows, and specifically valuation of television
17 shows?

18 A So you're asking me to remember dates,
19 but I--other than the proceedings that I've
20 testified to here, as you were talking about?

21 Q Yes.

22 A Not that I recall right now.

1 Q Okay. You also said you have some
2 experience with regard to movies, and what is the
3 nature of that experience?

4 A Well, the experience I was describing
5 was a dispute between MGM and Sony about the
6 James Bond film franchise.

7 Q And what were you asked to do in that
8 dispute?

9 A I worked on two pieces of--two
10 analyses. One had to do with a valuation of the
11 film franchise, and one had to do with the impact
12 of the dispute about the film franchise on MGM's
13 initial public offering.

14 Q With regard to the valuation of the
15 franchise, what kinds of factors did you
16 consider?

17 A I don't recall in great detail, but I
18 can tell you that I certainly looked at
19 viewership and I looked at revenues earned from
20 various categories of the films in the Library,
21 and also we were looking at the value of
22 obviously the franchise going forward with new

1 potential movies.

2 Q I want to go back to an exchange you
3 had with Judge Strickler with regard to your
4 criticism of Dr. Gray in which I think you
5 challenged what you perceived to be his
6 conclusion that viewership equals market value;
7 do you recall that exchange?

8 A I'm not sure I recall the particular
9 exchange, but the general issue is clear, of
10 course.

11 Q And I think Judge Strickler posed the
12 question to you as to who would be a good buyer
13 in the hypothetical market, and you said it would
14 be the cable system operator; do you recall that?

15 A Yes.

16 Q Okay. And in preparation for this
17 proceeding and for the 0003 Phase II cable
18 proceeding, and you were also involved in the
19 '98-'99 proceeding; am I correct?

20 A Yes.

21 Q And so in preparation for those three
22 proceedings, did you get a chance to read about

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1 the background of the development of the
2 compulsory licensing stock?

3 A Yes.

4 Q And do you recall reading about the
5 transactional costs involved in cable operators
6 acquiring programs on a program-by-program basis?

7 A Sorry, could you ask the question
8 again?

9 Q Do you recall reading about the
10 transactional costs involved with cable systems
11 acquiring programs on a program-by-program basis
12 as the creation of the compulsory licensing?

13 A Yes.

14 Q Okay. And so in this hypothetical
15 market, are you saying that the cable system as
16 the buyer will go back and essentially in the
17 market that in part created the compulsory
18 license, in your hypothetical market?

19 A I can probably answer, but I'm not 100
20 percent sure I understood the question.

21 Q I could try to rephrase it.

22 A I may need you to rephrase it then.

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1 Q So we agreed that one of the reasons
2 that the compulsory license was created was
3 because cable systems did not want to incur high
4 transactional costs when they went in the market
5 and had to acquire programs on a program-by-
6 program basis, right?

7 A Yes.

8 Q So when Judge Strickler was asking--
9 when you had that exchange with Judge Strickler,
10 you said the cable system would be the buyer in a
11 hypothetical market, and my question simply is
12 that sounds like it takes them back to the market
13 as it existed before the compulsory license,
14 where the cable system would now have to incur
15 those transaction costs to acquire programs.

16 A Well--

17 MR. BOYDSTON: Your Honor, I'm going
18 to object; I think it's ambiguous and an
19 incomplete hypothetical.

20 JUDGE BARNETT: Excuse me, overruled.

21 DR. ROBINSON: That means I answer,
22 right?

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1 JUDGE BARNETT: Yes.

2 DR. ROBINSON: So if my understanding
3 from reading the judges' orders--and I apologize
4 I can't really distinguish right now between the
5 2003 and the 1998-1999 order, but in any case,
6 you know, those orders, that they made it clear
7 that the hypothetical negotiation was between the
8 cable system operator and the copyright holder,
9 and they acknowledged that this is not the actual
10 world that we live in, so it's one of the reasons
11 why it's a hypothetical negotiation.

12 BY MR. OLANIRAN:

13 Q So your opinion is based on what the
14 judges have said in their prior opinions?

15 A Yes.

16 Q Okay. Now you also had an exchange
17 with Judge Strickler about the overlap sample,
18 which I think you agreed is not a random sample;
19 do you recall that conversation?

20 A I do.

21 Q And he asked, and you indicated that
22 even though it wasn't a random sample, but it

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1 covered about 85 percent of the population; do
2 you recall that?

3 A 85 percent of the royalty fees paid.

4 Q Royalty fees paid. Thank you. Would
5 you please turn to Exhibit 255? Well actually,
6 before you do that, you have a copy of your
7 direct--your supplement H, supplemental testimony
8 on page 8?

9 A Yes.

10 Q Now I have to find it. And that's the
11 table 3 of your supplemental testimony?

12 A Yes.

13 Q With respect to the programs acquired
14 in terms of the percentage of total fees and the
15 population represented by stations in programs
16 with supplier sampled, for '04 through '09, is
17 that the 85 percent that you were referring to?

18 A So 255 is an updated version of Table
19 3 on page 8 of my report, and because of the
20 changes that were made, where for example, all of
21 the jointly claimed programs were allocated to
22 MPAA, those numbers changed. And so this is the

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1 updated, and looking at this updated table, it
2 would appear that it's the percent of total fees.
3 It ranges from, depending on the year, from 69
4 percent or 68.9 percent to 80.3 percent.

5 Q Okay, so that 85 percent number you
6 cited earlier on is no longer the case?

7 A As I just said, this is the revision
8 of that table, yes.

9 Q Thank you. Now in your methodology,
10 you analyze essentially four different value
11 metrics, correct? You looked at the broadcast
12 hours, right?

13 A I looked at the broadcast hours.

14 Q You looked at time of day of claimed
15 broadcast, correct?

16 A Yes.

17 Q The number of distant subscribers on
18 the stations carrying claimed broadcasts,
19 correct?

20 A Yes.

21 Q And the fees paid by the carriers
22 carrying the broadcast, correct?

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1 A Yes.

2 Q Now with regard to the time of day
3 data, you used a national viewing average,
4 correct?

5 A Yes.

6 Q And what's the source of that?

7 A It's Nielsen data, it is, I mean shall
8 I look for the footnote or the cite of the source
9 in my report?

10 Q That's fine, you sourced it in
11 wherever you used it, right?

12 A Yes.

13 Q And is that Nielsen data, is that
14 specific to distant viewing, or is--

15 A It's national viewing.

16 Q It's national, so it's generic viewing
17 data?

18 A Uh huh.

19 Q And that's what you used to
20 essentially estimate the distribution of viewing
21 across the broadcast day on average and sort of
22 aggregate it out, right?

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1 A Correct.

2 Q Okay. And in your cable methodology
3 for each year in question, you applied the IPG's
4 share of volume to the time of day, fees paid and
5 number of subs, correct?

6 A Correct.

7 Q Okay. And this is the same
8 methodology that you used substantially in the
9 '98-'99 proceeding, isn't it?

10 A It has some significant differences.
11 In those proceedings, by virtue of the way the
12 data--by virtue of the differences in the data
13 that I had and the way things were constructed,
14 in '98-'99, you couldn't combine the data the way
15 you can here. Now the data are combinable, so I
16 can take the volume and I can take the number of
17 minutes of broadcasting as a volume measure and
18 apply these average measures to it, just like Dr.
19 Gray and Dr. Erdem do when they take--we already
20 read that Dr. Gray does when he takes viewership
21 and applies it to broadcasts.

22 Q When you say you can combine the data,

1 what do you mean?

2 A I mean that you can perceive the
3 minutes of broadcasts as a volume measure, and
4 you can perceive the other metrics as average
5 values per volume, I don't remember, I think it's
6 per quarter hour, however many minutes. So it's
7 essentially exactly the same thing that Dr. Gray
8 does, but he's applying his distant viewership
9 average to the volume of broadcasts, and I'm
10 applying these three factors averaged to the
11 volume of broadcasts.

12 Q So they're different with respect to
13 the data sets that you use, correct? Meaning
14 what you're advocating in this proceeding, the
15 metrics you're advocating in this proceeding
16 versus the metrics that you advocated in the '98-
17 '99 proceedings?

18 A So there are several things that are
19 different about what happened in '98 and '99 that
20 happened here; I'm not sure I can--I'm not
21 thinking about '98-'99, I'm thinking about what I
22 did in this analysis, so I'm not sure I can

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1 identify for you one by one.

2 Q Thank you.

3 A There are differences.

4 Q Fair enough. In terms of '98-'99, did
5 you use broadcast hours?

6 A Yes.

7 Q Did you use time of day?

8 A Yes.

9 Q Did you use number of distant
10 subscribers?

11 A I used a measure of distant
12 subscribers, yes.

13 Q And did you use a measure of fees paid
14 by the carriers?

15 A I did.

16 Q Okay. You testified in the 0003
17 proceeding in the rebuttal phase, so you didn't
18 advocate a methodology for IPG in that
19 proceeding, correct?

20 A Correct.

21 Q And well you know that IPG did
22 advocate in that proceeding a reliance on the

1 same metrics that you're not proposing to be
2 relied upon in this proceeding, right?

3 A You know, they computed whatever
4 metrics they computed, they may have used similar
5 names for whatever it is that they did, but it
6 was not my analysis and it's not the same as
7 what's being done here.

8 Q I'm asking about just the metrics, I'm
9 not talking about the analysis. The same metrics.

10 A Well, I mean for example, even between
11 '98 and '99, you just asked me did you use
12 distant subscribers. Well--or fees. Well, I
13 used them, but that doesn't mean I used them in
14 the same way. So you can just put a label on it,
15 but that doesn't mean anything that goes under
16 that label is the same thing, so I don't really
17 know what you're asking.

18 Q Do you know whether or not IPG used
19 broadcast hours in the 0003 proceeding?

20 A I believe they did.

21 Q Did they use time of day factor?

22 A Was it something that they called time

1 of day factor, and I don't know exactly what that
2 meant? I don't even know what they called it.
3 Yes, I think they used something like that, but I
4 don't know what they did, and it's not what I
5 did, so.

6 Q I understand it's not what you did.
7 You read the order in the 0003 proceeding, did
8 you not?

9 A Yes.

10 Q Okay, and you read the order in the
11 '98-'99 proceedings, did you not?

12 A I did.

13 Q And you read the order in the '97
14 Phase II proceeding, did you not?

15 A I think so.

16 Q Actually, it's in your testimony--

17 A Then I did; it's hard to keep track of
18 it.

19 Q And you do understand that for the '97
20 Phase II proceeding, and the 0003 Phase II
21 proceeding, IPG presented metrics for market
22 value as you're doing in this proceeding?

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1 MR. BOYDSTON: Your Honor, I'm going to
2 object. This is calling for speculation on her
3 part. She wasn't involved in giving methodology
4 in either of those; she's done her best to
5 remember what she's read about the decisions, but
6 that's--I think it's gone far enough. He's
7 asking her to speculate on what was argued there.

8 MR. OLANIRAN: I'm not asking her to
9 speculate, I'm asking her, she read all the
10 relevant decisions; I'm simply asking her what
11 she understood from those decisions as to what
12 IPG's methodology was.

13 MR. BOYDSTON: This is memorable of
14 some of the questions I asked her about certain
15 exhibits where you said the same thing, which
16 was, you know, that's asking her speculate on
17 something--

18 JUDGE BARNETT: Sustained.

19 BY MR. OLANIRAN:

20 Q Dr. Robinson, going back to the
21 application of the factors, so for each year you
22 calculated a value of an IPG hour based on time

1 of day, fees paid and the number of subs, what we
2 have is different calculations, correct? You do
3 that for each year, right?

4 A Yes.

5 Q And then you did the same for
6 satellite, except that you omit the calculations
7 for fees paid, and you used two time of day
8 calculations, is that right?

9 A Are you looking at a particular
10 exhibit?

11 Q No, I'm not; I actually memorized--

12 A Wow. Let's see.

13 Q I'm just trying to get--

14 A I'm just looking for the summary here.

15 Q --a generalized view of your
16 methodology, not--

17 A Right, so there is, in satellite there
18 were two different versions of the Nielsen data.

19 Q So the general scheme is you have the
20 value of an IPG hour report, time of day, fees
21 paid--and let's stick with cable for a minute--
22 and number of subscribers, and then you issue

1 those values by IPG's share of total hours to
2 arrive at what you call a royalty share estimate
3 for each of these three metrics, correct?

4 A Correct.

5 Q So if we look at the table in 260.

6 A That's what I'm looking at, yes.

7 Q Right. And that, so in proposing a
8 final allocation in each year, you select a range
9 using the highest IPG share estimate and the
10 lowest IPG share estimate among the three values
11 you compute for each year, correct? So you had
12 for '04 for example, once you finished the
13 calculation--are you at Exhibit 260?

14 A Yes.

15 Q So if we take '04 under program
16 suppliers, for example, if you multiply column A
17 by column B, you get a value, correct?

18 A Correct.

19 Q And you repeat that process for
20 columns--multiplying column A by column C and
21 column D, and you get individual values, correct?

22 A Correct.

1 Q And then you take the lowest of the
2 value and the highest, and that is the range of
3 the royalty share that you expect IPG's share to
4 fall under, is that right?

5 A The range is literally the
6 mathematical computation that you just described,
7 which is the range based on the data and the
8 results that are in front of you as it existed.

9 Q I understand it's literally the
10 mathematical range; as an expert, are you opining
11 that there's some evidentiary value to the range
12 as opposed to the fact that it's simply just
13 that, a mathematical expression of the range?

14 A I definitely think there's evidentiary
15 value to the range.

16 Q What is that evidentiary value
17 according to you?

18 A I think it provides information about
19 what the value of these programs are. I mean I
20 look, for example, let's just look at the top
21 row, and I say okay, IPG had 1.97 percent of the
22 hours, but we all understand that, you know, one

1 hour, an average IPG hour may be worth more or
2 less than an average MPAA hour. The question is
3 how do we figure out whether it's worth more or
4 less, and by how much, and these are three
5 different ways of getting at that, and so for
6 example, when I look at the range of the 1.28,
7 that comes from the time of day number, the time
8 of day number basically suggests that IPG shows
9 at 64.6, says that IPG shows are shown in general
10 at times at are--where there's less viewership
11 than MPAA shows, and therefore that 1.97 percent
12 broadcast is not actually worth 1.97 percent,
13 it's worth less. It's worth 1.28 percent.

14 JUDGE STRICKLER: But we had a colloquy
15 about these numbers before this document was
16 introduced about how you do this, consistent with
17 what Mr. Olaniran asked you. And as I recall
18 your testimony, I think it was in this case as
19 well as in the prior 1999 proceeding, you said
20 that we couldn't look at any one of your numbers
21 in a vacuum, in isolation, that it was looking at
22 them in combination that they made sense. Is

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1 that an accurate summarization of your opinion?

2 DR. ROBINSON: I do recall that
3 testimony from the prior, at least one of the
4 prior cases, and I will say that this--there's a
5 nuance in this analysis, I think this analysis is
6 a more sophisticated version, so here's how that
7 is. So let me say a few things. One is that
8 what I've done here is I've shown the impact of
9 these different metrics because it may be that
10 some metrics seem more compelling than other
11 metrics, so maybe you'll want to weigh some
12 metrics more than other metrics.

13 JUDGE STRICKLER: I understand that,
14 I appreciate that, but I'm asking you not--I
15 appreciate you giving us the option, but are you
16 saying that you find the discrete elements within
17 the range, there's really just three elements to
18 the range, right, that all of them are probative,
19 I mean we can look at any one in isolation in
20 your opinion, or that we have to use them in some
21 sort of an aggregate form?

22 DR. ROBINSON: I would say both. So

1 I would say first of all, I think you could look
2 at them--you can look at them in isolation, you
3 can look at them together; in this case as
4 opposed to the prior case, you could actually
5 multiply them across. So I've done just one at a
6 time, where I've multiplied the volume by time of
7 day, but you could multiply volume by time of
8 day, by fees paid.

9 JUDGE STRICKLER: Is it your opinion
10 that any number within your range inclusive
11 through the years is a reasonable allocation to
12 IPG?

13 DR. ROBINSON: I would say that I am
14 not a big fan of any of the data and the analyses
15 that anybody has been able to give in order to
16 look at this relative market value, although I do
17 think that a good analysis of subscribership is
18 what's needed, and I think we need subscriber CSO
19 level data so we'll be able to--all subscribers
20 out of CSO.

21 JUDGE STRICKLER: Let's try to do the
22 best we can with what we've got. So let's go

1 back to my question.

2 DR. ROBINSON: Right. So with that
3 said, excuse me, you know, based on looking at
4 Dr. Gray's analysis and based on doing my
5 modifications to his analysis, which by the way
6 don't particularly improve IPG's numbers, it's
7 just that I think the more accurate way to--

8 JUDGE STRICKLER: Your modifications
9 that are not in evidence?

10 DR. ROBINSON: I don't know for Gray?
11 I mean, it's not new for Gray.

12 JUDGE STRICKLER: Let's go back to my--
13 -let's not go off on a tangent.

14 DR. ROBINSON: My point is--

15 JUDGE STRICKLER: No, no. Let me ask
16 the question again, because I want to see if I
17 can get an answer. Are you saying that any
18 number, in your opinion, within the range
19 inclusive, you know, low point and high point in
20 your column E on Exhibit 260 constitutes in your
21 opinion, a reasonable royalty share for IPG?
22 That's a--you can say yes or no, and then I'm

1 happy to hear explanation, but if you can do
2 that--

3 DR. ROBINSON: The vote is no.

4 JUDGE STRICKLER: Okay.

5 DR. ROBINSON: And then I'll explain.
6 I think that based on Dr. Gray's analysis, based
7 on my analysis of Dr. Gray's analysis, I think
8 that the viewership, the time of day factor to me
9 is getting more--Dr. Gray's analysis--well not
10 his analysis, but my analysis of his analysis and
11 cleaning it all up at the end of the day is
12 getting us some more numbers, is more consistent
13 with the lower end of the royalty range that I
14 have here, and that's more consistent with the
15 column B, the time of day. So I find that to be
16 the most compelling.

17 JUDGE STRICKLER: Okay, just so I
18 understand, Exhibit 260 prime as we've been
19 calling it is--that exhibit doesn't include any
20 adjustments for Dr. Gray's methodology, this is
21 simply an application of your methodology,
22 correct? This exhibit.

1 DR. ROBINSON: Yes, I had another
2 exhibit that has my application of Dr. Gray's--

3 JUDGE STRICKLER: Right, but 260 prime
4 is just yours, and you're saying that you think
5 the most reasonable share for IPG pursuant to
6 Exhibit 260 prime is whatever we get when we
7 multiply column A times column B?

8 DR. ROBINSON: Yes.

9 JUDGE STRICKLER: Thank you.

10 BY MR. OLANIRAN:

11 Q And you had actually already set on
12 this path before you saw Dr. Gray's methodology
13 for the first time, had you not, in terms of the
14 metrics that you were going to use?

15 A True, and I didn't have his viewership
16 data, so I couldn't do anything with it.

17 Q And you seem to be saying that your
18 methodology validates Dr. Gray's methodology or
19 vice versa with respect to time of day; is that
20 what you're saying?

21 A I'm saying that with Dr. Gray's
22 analysis cleaned up, that I do find it to be

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1 consistent with the time of day numbers that I'm
2 reaching with this methodology. I'm further
3 saying that I didn't get the data on viewership
4 to look at until after this report had to be
5 filed. If I had gotten it before, I would have
6 done something with it before.

7 MR. OLANIRAN: Your Honor, it's 4:30,
8 I know that--

9 JUDGE BARNETT: How much more do you
10 have, Mr. Olaniran?

11 MR. OLANIRAN: I have at least half an
12 hour, perhaps 45 minutes.

13 JUDGE BARNETT: Well, we're not going
14 to be able to make that today.

15 DR. ROBINSON: I take it I'm not going
16 home to Santa Monica tonight?

17 JUDGE BARNETT: I'm afraid not.
18 Fortunately we imported Santa Monica weather for
19 you, since you have to stay here. We will be at
20 recess until 9:00 in the morning.

21 (Whereupon, the hearing in the above-
22 entitled matter went off the record at 4:28 p.m.)

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